Supreme Court, U.S.
FILED

(1) 03 830 DEC 5 - 2003

No. _____ OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH
Petitioner,

v

ZEELAND BOARD OF EDUCATION,
DON LAKE, TOM BOCK, GARY FEENSTRA,
et al.,
Respondents.

Pro se Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

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PETTION FOR WRIT OF CERTIORARI

By:
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December 4, 2003

97 AP

QUESTIONS

Mr. Bush, a public school teacher, has for 25 years has been the target of bullying and civil rights violations for exercise of 1st Am. rights. Despite prior meritorious actions he has never been able to enforce any rights *pro se*. Justice has been repeatedly obstructed by biased and unethical judicial officials. Here he should have won on summary judgment.

1. Whether *pro se* civil rights litigants have substantive Constitutional and statutory rights to pursue Justice in the courts of the United States, and if so?

2. Whether rights of speech and due process protections of the right to brief also include a reasonable time element to prepare the brief? and if so

3. Whether strict scrutiny should be applied because of the importance of speech and the potential for deliberate obstructions of First Amendment rights of speech and petition to the question of?

4. Whether briefing time of less than 30 days is unreasonable for *pro se* appellant to contest complex, deliberately erroneous 40 page opinion, with issues of full faith & credit, res judicata, collateral estoppel, sanctions, injunction prohibiting lawsuits, bond, attorneys fees, prejudice, ignoring affidavits, denying discovery and extention of time to respond to summary judgment, or deliberately obstructs said rights?

5. In the event the time allowed is found reasonable, whether the sanction of dismissal is too heavy handed in a *pro se* timely appeal where the brief not filed in time, but no notice of impending dismissal was sent?

6. Whether the close association and friendships formed by district court judges serving on supervising court of appeals

by assignment creates unconstitutional conflict of interest, impression of bias or actual bias, potential for obstruction of justice and raises questions about the integrity of the judicial system?

7. Whether this case should be heard and decided on the merits or remanded to the 6th Cir. in light of the prejudices shown?

PARTIES TO THE PROCEEDING

Petitioner is Gerald Bush, a *pro se* civil rights plaintiff in the District Court and Appellant in the Court of Appeals. He brings this action in his own behalf, but could have brought it on behalf of a class, if he had found an attorney to take the case.

Respondents are the Zeeland Board of Education, and members thereof Don Lake, Tom Bock, and other unnamed members and former members, et al, and Superintendent Gary Feenstra.

TABLE OF CONTENTS

Questions presented i
Parties to the proceeding iii
Index of Authorities vi
Petition for writ of certiorari 1
Opinions below 1
Jurisdiction 1
Constitutional and statutory provisions involved 1
Statement of the case 3
I. Factual background 5
A. Plaintiff 5
B. Schools policies and practices 6
II. Proceedings below 7
A. District Court 7
B. Court of Appeals 8
Reasons for granting the writ 9
1. Several issues raised here call for this Court to exercise its supervisory authority 9
2. Protection of the right to sufficient time to speak by briefs is an essential element of the rights of Speech and Due Process and is of national importance to all litigants 11
3. *Pro se* litigants nationwide need protection of their rights by this Court 20
Protection neded from district courts and Sixth Circuit 21
4. Evidence of close associations by district judges serving on a supervising court of appeals raise issues of national importance 22
5. The merits raise issues of national importance 26
6. The damages raise issues of national importance 26
Conclusion 28

APPENDIX
DISTRICT COURT OPINIONS,
ORDERS AND JUDGMENTS

Appendix A, First Case Management Order, (July 9, 2002) (Magistrate, denying discovery & re: time for sj) 1a

Appendix B, Order, (Aug. 13, 2002) (J. Hillman & M. Scoville,) (deny Pl. Mot. discovery, ext. of time.) 2a

Appendix C Order, (Oct. 22, 02) (motion ext. time moot, M. Scoville) 5a

Appendix D Opinion (March 6, 03) (summary judgment, sanctions, injunction against plaintiff, CJ Bell) 6a

Appendix E Order (March 6, 03) (summary judgment, sanctions, injunction against plaintiff, CJ Bell) 47a

Appendix F Memorandum Opinion, Costs And Attorney Fees (April 18, 2003, CJ. Bell) 49a

Appendix G Judgment for Costs And Attorney Fees (April 18, 2003, CJ. Bell) 54a

Appendix H Order Deny Relief From Judgment (April 18, 2003) (reh./recon., CJ. Bell,) 55a

SIXTH CIRCUIT ORDERS

Appendix I Briefing schedule (May 22, 2003) 57a

Appendix J Clerk's order of dismissal (July 8, 2003) 59a

SUPREME COURT

Appendix K Extension of Time 60a

INDEX OF AUTHORITIES

CASES

Aaron v Cooper, 357 US 566 (1958) 3, 16

Adkins v E.I.DuPont, 335 US 331 (1948) 17

Becker v Montgomery, 532 US 757 (2001) 3,4,13

Communist Party of USA v Subversive Activities Control Board, 351 US 115, 100 L ed 1003, 76 S Ct 663 (1955) 10

Cooke v US, 91 US 389 (1875) 17

Ex parte Terry, 128 US 289 (1888) 10

Federal Maritime Comm. v South Carolina, 535 US 743 (2002) 12

Feiner v New York, 340 US 315 (1951) 18

Greenwood v Peacock, 384 US 808 (1966) 16

Kremer v Chemical Construction Corp., 456 US 461 (1982) 26

Mawby v Zant, #93-3583 24

Miofsky v Superior Court of Cal., 703 F2d 332 (9th Cir, 1983) 24

New York Times v US, 403 US 713 (1971) 16

Nixon v Fitzgerald, 457 US 731 (1982) 18

Shaffer v US, #93-6037 24

US v Berry, 657 F.2d 270 (1981) 23

US v Microsoft, (2001, DC Cir) 20

Walters v National Assoc., 473 US 305 (1985) 16

Weisgram v Marley Co., 528 US 440 (2000) 16

OTHER
A Familiar Exposition of The Constitution of The United States, by Joseph Story, p 326, Regenery Gateway, Inc., cr. 1986 28
Bible 9
Constitution Preamble 9
Declaration of Independence 9
First Amendment 1, many,
Article III 10

28 USC 47 2
28 USC 144 2, 22
28 USC 453 2
28 USC 455 3, 22
28 USC 1654 2, 20
28 USC 1738 5
42 USC 1983 5, 10

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review decisions of the 6th Circuit Court of Appeals and the District Court of the Western District of Michigan.

OPINIONS BELOW

The opinion and order of the District Court granting summary judgment is reproduced in the appendix. App D & E p 6a, 47a. The briefing schedule is in the appendix. App I, p 57a. The order of the 6th Circuit is unpublished and reproduced in the appendix. App J, p 59a.

JURISDICTION

Jurisdiction rests in 28 USC 1254. The decision of the 6th Circuit to dismiss was made on July 8, 2003. (App J p 59a) Extension of time was granted by Justice Stevens until December 5, 2003. (App K, p 60a)

CONSTITUTIONAL & STATUTORY PROVISIONS

First Amendment rights are at issue:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacably to assemble, and to petition the Government for redress of greivances."

This suit was initially brought under 42 USC 1983. The Civil Rights Acts of 1871, 42 USC Sec 1983, says in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

Since Petitioner has been *pro se* from the start, 28 USC 1654 is also integral to review.

1654. Appearance personally or by counsel
"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

As to judges [and clerks]:

28 USC 47 "No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

28 USC 144 In part - "Whenever . . . the judge . . . has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further . . ."

28 USC 453 Oath in part "I will administer justice without respect to persons, and do equal right [justice] to the poor and to the rich, and I will faithfully and impartially discharge and perform all the duties

incumbent upon me ____ under the Constitution and laws of the United States. So help me God."

28 USC 455(a) "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be question." (Most of the balance is not real relevant.)

There is no statute or rule Petitioner is aware of regulating briefing at the court of appeals. (Other provisions regarding the merits are not included for space reasons, unless the court should so decide.)

STATEMENT OF THE CASE

Petitioner requests this Court exercise its power and discretion under its supervisory authority and Rule 10 of its rules to grant the writ of certiorari to the United States Court of Appeals for the 6th Circuit who dismissed the timely appeal before judgment when Petitioner did not file a brief within the less than 30 days allowed by an assistant clerk as this Court did in *Becker v Montgomery*, 532 US 757 (2001) (unanimous) under similar circumstances. (*Becker* held that dismissal for failure to sign the claim of appeal was not jurisdictional or fatal to the appeal.) This Court has recognized the "vital importance of the time element" in litigation. *Aaron v Cooper*, 357 US 566, 567 (1958). This case presents questions about First Amendment, Due Process and access rights relative to the essential element of time in speaking through briefs, especially for *pro se* civil rights plaintiffs attempting to reverse lengthy, complex and deliberately justice obstructing opinions contrary to precedent. There are also questions of prejudice that intentionally hinders such speech in the judicial system.

In *Becker*, this Court stated: "We granted certiorari . . . to assure the uniform interpretation of the governing Federal Rules." US at 762. Petitioner notes that he is not aware of any rules or statutes setting the time requirements for briefs on appeal or in many other situations. Therefore, arbitrary, capricious and even justice obstructing requirements may be set by those in charge without any effective appellate recourse, as here. This seems to Petitioner to be an instance where this Court's supervisory authority should come into play.

Furthermore, in Petitioners 15 years of *pro se* experience, tight time restrictions are habitually placed upon *pro se* litigants for oppressive reasons escaping normal detection, which is likely the case here. (Note: In *Becker*, this Court said in disagreement with amicus: "We do not agree that Rule 3(c)(2)'s prescription, . . places *pro se litigants in a singularly exacting time bind.*" US at 766. (emphasis added)). Even if not for oppressive reasons, *pro se* litigants, as the Petition attempts to demonstrate, desperately need this Court's protection so that their speech is actually heard, instead of habitually suppressed, and decisions are made in accord with the Constitution and valid statutes. The Petition attempts to expose a few of the many unjust obstacles judicial officials routinely use to bar justice in non-attorney *pro se* cases, the outrageous retaliation they face, the bias and a few of the unjust damages they suffer for only attempting to protect and uphold the Constitution, the rule of law and their own rights.

America is suffering the cost in gross widespread loss of confidence in the judicial system. A system for the rich and against the poor and *pro se* - the majority.

In addition questions of judicial bias and conflict of interest are raised because of the close association and likely friendships between judges of the 6th Circuit and the district judges thereunder serving by appointment. This practice reduces the likelyhood of impartial decisions based upon true facts and established precedents, especially in *pro se* cases where very little scrutiny is ever focused.

This is the last chance this Court will have to see, if it gets to the merits, how outrageously and how frequently its numerous precedents protecting Petitioner's Constitutional rights have been deliberately violated. These are other very important questions of national importance. This case presents absolutely clear examples of Federal Constitutional rights violations of the 14th Am. and this Court's precedents attempted to correct and eliminate. Obviously, success has not been achieved. Questions include whether: 28 USC 1738 is unconstitutional on its face and as applied; *pro se* speech in briefs, etc. is protected; retaliation against *pro se*; mental searches and privacy in relationship to dismissal of protected government employee; rights of *pro se* litigants; obstructing justice by not following clear precedents, etc.; state statute unconstitutional; *res judicata* and collateral estoppel as bar to 42 USC 1983 suits and conflict with the Supremacy Clause; etc.

I. FACTUAL BACKGROUND

A. Plaintiff

The background of this case is a very long story, to long for here. The bottom line is Petitioner did nothing wrong, but nonetheless has been disciplined repeatedly for years by a bully boss, retaliated against and now dismissed in violation of his Constitutional

rights. The district judge refused to accord Bush's affidavits their due weight, because he objects to the content and it goes against his demonstrated pro government bias, and would inhibit his intentions to obstruct justice. Therefore, 95% of the factual background is absent. 9a

Plaintiff began teaching at Respondent in 1969 and obtained tenure in 1971. (App 6a-7a) He exercised numerous First Amendment rights between 1976 and 1981 before he was dismissed by layoff subterfuge, some which offended his new bully boss, the union and others. He was not recalled when he could have been; suspended 3 times without Due Process; transferred unjustly and forced to serve under the bully boss; (incomplete list) forced to see a psychogolist for written briefs, sworn testimony, etc. and dismissed when he refused, after numerous preceding lawsuits attempting to enforce various rights. This suit resuted.

Mr. Bush has been a *pro se* litigant (plaintiff and defendant) for about 15 years in state and federal courts in pursuit of Justice, much of it with the Defendant School. Therein he has learned first hand many of the tricks of obstruction of Justice, and the players - biased and unethical judges, lawyers, clerks and court reporters - including the Respondents and its agents.

B. School policies and practices

The Respondents - the Board, the Supt., the school and its agents - as their record demonstrates, are all absolutely opposed to Constitutional rights and statutory rights and anyone who seeks to enforce them and have been for 25 years. They have knowingly oppressed and obstructed justice. They have hired

known unethical attorneys to obstruct justice to save their reputations.

The School and Defendants have known of the bullying, harassment and discrimination against Bush and violations of his rights for many years, but done nothing to prevent it. In fact, they have contributed to it.

In the present suit they have dismissed Bush in retaliation for exercising his rights. Even though Bush has been laid off twice unjustly, suspended 3 times without any Due Process at the school level, transferred without regard to his seniority or rights, forced out of his job by harassment, sick leave status changed, and dismissed, yet he has never had so much as one hearing before the Board or even any other impartial decisionmaker. He has repeatedly had to *appeal* to state agencies in useless attempts to enforce his rights.

II. PROCEEDINGS BELOW

A. District Court

Many important details are omitted because of space requirements.

For many years, Mr. Bush has attempted to find attorneys to take his case, but none seem to want civil rights cases in federal court in the Western District of Michigan. Therefore, Mr. Bush was *pro se* at the Rule 16 Conf. where he was first informed Def. had filed a (1" thick+) motion for summary judgment and the rush to judgment began. See App A, B, 1a, 2a-4a. His motion to extend time was denied. App B, 2a-4a; C, 5a. Def. motions for summary judgment and sanctions were granted on the basis of preclusion and frivolousness. App D, E, F, G, 6a-55a.

Bush challenged the decision on motion for reconsideration, contending, among other things, 28 USC 1738 is unconstitutional on its face and as applied. But, as usually happens in pro se cases, the judge ignored the motion and arguments and ditched it. App H, 55a

B. The Court of Appeals

Mr. Bush filed the notice of appeal on Monday, May 19, 2003. (Docket #65) On Thur. May 22, 2003 an assistant clerk sent a letter and briefing schedule to Mr. Bush. (The date it was received is unknown. But mail from the 6th Cir. often takes 3 days.) The notice demanded the Appellant's brief be filed on June 19, 2003. (App I, 57a) (31 days after the appeal was filed and less than *28 days* from the date it was *sent*, not counting days in the mail both ways.)

(Note: Mr. Bush had temporarily lost the briefing schedule, but found it after the time had expired. At that time the Bushs were also deeply involved with substantial and outrageous harassment from the City of Zeeland resulting in several other cases and gross disruption of their lives. These also resulted from obstruction of justice by Judge Bell and other judges. 46a)

On July 8, 2003, the case was dismissed for lack of a brief. (App J, 59a) (Note it states the brief was to be filed on June 16, 2003.)

This is a typical justice obstructing tactic *pro se* litigants face on a daily basis within the judicial system. (Note also the short brief time to oppose summary judgment. (App B, 2a-4a) Short times = short, unresearched and inadequate responses = obstruction of justice.)

Mr. Bush filed for extension of time to file this Petition, which was generously granted by Justice Stevens. (Thank-you very much.) (App 60a)

REASONS FOR GRANTING THE PETITION

1. SEVERAL ISSUES RAISED HERE CALL FOR THIS COURT TO EXERCISE ITS SUPERVISORY AUTHORITY

The rights of the poor, *pro se* and middle class, who cannot afford "$295 per hour" attorneys and their accomplices (50a-51a), all need this Court's protection from government, its unethical lawyers, biased judges and even clerks and court reporters. This Court is ultimately responsible for the standards of integrity of all these judicial officials. If any obstructs or hinders justice in any way, this Court needs to deal with it, ultimately, to insure the integrity of the judicial branch.

Five Thousand years ago the Bible said: "do *justice*." Prov. 21:3; Micah 6:8. Long afterward, our county was founded on the goal of *JUSTICE* for all.

The Declaration of Independence cites the offenses of Britian and the ruling King over us at the time:

> "He has obstructed the Administration of *Justice* . . . " * * * "They too have been deaf to the voice of *Justice* . . ."

The Constitution preamble states:

> "We the People of the United States, in Order to form a more perfect Union, establish *Justice* . . . " United States Constitution, Preamble. (emphasis added)

This Court was established as part of this "more perfect Union" to enforce and protect Justice. Article III.

> "Whether the facts justified such punishment was for that court to determine *under its solemn responsibility to do justice*, and to maintain its own dignity and authority. *In re Chiles*, 22 Wall. 157, 168 [89 US 157 (1875)]." *Ex parte Terry*, 128 US 289, 310; 32 L Ed 405; 9 S Ct 77 (1888) (emphasis added)

> "*The untainted administration of justice* is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. *This Court is charged with supervisory functions* in relation to proceedings in the federal courts. See *McNabb v US*, 318 US 332, 87 L ed 819, 63 S Ct 608 [1943]." (emphasis added) *Communist Party of USA v Subversive Activities Control Board*, 351 US 115, _____ (1955) (emphasis added)

This case was brought under the 14th Am. to find Justice under 42 USC 1983 and other civil rights acts, to find relief and a remedy for rights clearly and repeatedly violated by state officials.

> "Thus, as *Mitchum* makes clear, Congress has not rendered federal courts impotent in the face of an infringement of constitutional rights by the judicial arm of state government. As the Court said in *Mitchum*, "the very purpose of sec 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from

> unconstitutional action under color of state law, `whether that action be executive, legislative, *or judicial*.'" 407 U.S. at 242 (quoting *Ex parte Virginia*, 100 U.S. 339, 346, 25 L. Ed. 676 (1879) (emphasis added))." *Miofsky v Superior Court of Calif.*, 703 F2d 332, 335 (9th Cir, 1983)

"Protecting the people from unconstitutional action" *Id.* is only effectively done by this Court when obstruction of justice rears its ugly head in an active case.

While Justice and the integrity of the judicial system utimately rests in this Court's hands, in 99.99% of the cases it is handled by many other hands with each having a much greater opportunity to obstruct justice in subtle ways and with substantially less scrutiny. For these reasons this Court must be constantly aware of, and searching for, such unethical conduct. This is one of those cases this Court should review. Justice has not been done in this case.

The federal courts (Western District of Michigan and 6th Cir.) have refused to allow Petitioner any remedy or relief, in this and other cases. *Only* this Court can deal with these obstructions of Justice.

Petitioner represents the whole class of nonattorney litigants who must pursue Justice on their own. All need this Court's protections.

2. PROTECTION OF THE RIGHT TO SUFFICIENT TIME TO SPEAK BY BRIEF IS AN ESSENTIAL ELEMENT OF THE RIGHTS OF SPEECH AND DUE PROCESS AND IS OF NATIONAL IMPORTANCE TO ALL LITIGANTS

Petitioner is not aware of any decision by this Court on the time element related to the rights of

speech or Due Process. It is an issue of national importance, especially to *pro se* litigants, where reasonable time is usually denied without good reason and for oppressive reasons. Petitioner has no access to information on time allowed for briefing for litigants with attorneys. He suspects they are granted longer times, because he has seen it in state cases.

Speaking through briefs is an essential part of First Amendment rights for all litigants. The *time element* necessary to do so, and the speech, are also protected by the rights of Due Process and Equal Protection. (5th & 14th Am.). Clearly to take away sufficient time to speak or write would effectively bar these rights. Time issues are one of the greatest obstacles to justice for *pro se* to overcome. Times are rarely generous. Often those with power to decide them, do so restrictively and unreasonably for *pro se*, without good cause and deny extensions. (*Federal Maritime Comm. v South Carolina*, 535 US 743, 759 (2002) "The ALJ also *fixes `the time* and manner of filing briefs . . ' " emphasis added) In other words, judicial officials can oppress *pro se* litigants, as here, with short and insufficient time limits in order to deliberately obstruct their cases and prevent Justice from being done.

The poor and poorly represented (*pro se* nonattorneys) typically have substantially greater problems and substantially less resources to accomplish all necessary legal tasks. To impose tight time restrictions upon them, as here, except maybe in extremely compelling extra ordinary situations, is plainly unjust. Here there was absolutely no need for any haste in briefing, except to clear the docket of the easily disposed of *pro se* cases, in order to keep the 6th Circuit's *18 month average* as low as possible. (Grand Rapids Press, 2003)

(Note: *Becker, supra,* a *pro se* case, like most other *pro se* cases in the 6th Cir., was rushed to judgment in 6 months. *Id.* at 761. See also *Bush v Zeeland, Mich.*, #O3-1080, also about 6 months.)

Time issues have denied justice in prior situations in the state branches of this case. See App 16a ". . held that plaintiff's appeal of the Board's decision was *untimely.*" (emphasis added) (Fn 1. By law teachers have to "appeal" timely - *filed* within 20 days - to *qualify* for a hearing. *No board or any other hearings.* Here Resp. and its unethical attorneys *deliberately manipulated the timing of notice* of the Nov. 17, "resolution" (App 16a) so that it arrived in the extremely busy days and weeks just before Christmas and was due on that day. Bush's appeal was *sent timely,* but *not filed timely* because of Tenure Commission vacations and their unknown in-house mail delays in delivery. Pet. #00-1796, cert. den.)

See App 24a "Plaintiff did *not file timely* written exceptions . . " (Fn 2 The time allowed is only 20 days to *file* exceptions to a 20 page decision with many deliberate constitutional errors all favoring the government. Bush never should have to had to be the appellant. Bush timely faxed a motion to extend time. It was rejected and rehearing denied. Pet. #00-1796, cert. den.) Other examples from prior cases are similar.

Time issues also played an oppressive role at the district court in this case. Petitioner had just *28 days* initially to respond to Def. over 1" thick motion for summary judgment, plus extension of time was denied. See above at_____; App A, B & C 1a-5a. In addition, during about the same time, Bush was supposed to respond to Def. motion for sanctions. But, because of little time and the greater importance of summary judgment, the sanctions response had to be

abandoned. (App C, The Magistrate indicates deceptively and erroneously a response was filed, but declaring the time extension issue "moot"; In conflict see App D, 36a. The district court deceptively states "Plaintiff has *elected* not to file a response to defendents' motion." (emphasis added) (See above p , 7- ;) (Note: This Court should be aware that one of the justice obstructing tactics of unethical gov't paid attorneys in this case, and other Bush [and *pro se*] cases, is to overload *pro se* litigants with multiple cases and motions to work on at the same time, so they don't have time to do any good and have to abandon some. Here Resp. had *3 attorneys* and a paralegal in opposition to Bush. See Docket #54, 55; App F p 50a-51a is deliberately deceptive on this point. Only 2 listed. Money rules!)

Plus, at the same time Bush had to deal with *at least* 2 other cases. (*Bush v Zeeland*, DC #1:02-cv-565; *Zeeland v Bush*, (Mich.) O2-43822 CZ; See App 46a. Gov't stealing private property of Bush's in violation of 10 Commandments.)

In Bush's *first* federal civil rights suit, the district court granted Bush's motion for 30 day extension of time to file the notice of appeal, but denied other relief. But the 6th Cir. *clerk* dismissed the appeal because it was not filed with 60 days of the primary decision and order, *even though it was within the time (30 days) allowed by the district court*. (Pet. #97-1645, cert den.) (Again the district court decision had violated established Constitutional rights and precedents, was pro government and anti-*pro se*. This may have been a deliberate trap by the judge or influenced by Respondents' unethical attorneys' ex parte contacts with the clerk. Whatever, none are can be trusted.)

In *Bush v Zeeland, Mich.*, (DC #1:02-CV-565) (App 46a) recently affirmed by the 6th Cir. (#O3-1080) and soon to be brought before this Court, *the same judge as in this case* refused to grant any extension of time to serve Def. even though Bush's affidavit attested to harassment by the City during the last weeks before the 120 days expired and that they had obtained a state order in violation of federal law. (Note: the judge portrays the state case as valid, when he knows for a fact the decision was made *after removal* and before remand. 46a)

Time is absolutely fundamental to Justice. Denial of time is a symptom of injustice. The importance of the time element is equal to or greater even than the right to be heard. Without time to prepare or to speak, the right to be heard is meaningless.

In the first place, in this case and almost all others, Petitioner should never have been the appellant. Petitioner should have won in this case in the state case. But, since he didn't, he should have won at the district court. (See the MERITS) So, being forced to appeal timely, and brief timely, are injustices that have been forced upon him by biased pro-gov't, anti-*pro se* judges. Plus, he has *never* won anything on appeal, including time issues.

Petitioner believes from his experiences that in 99% of the *pro se* cases all the burdens of "the brutal luxury of an appeal" are placed on the *pro se* litigant - the least able to bear it - including cost, timeliness, questions, issues, authorities, preparing the joint appendix, etc. *Greenwood v Peacock*, 384 US 808, 16 L Ed 2d 944, 969, 86 S Ct 1800 (1966) (footnote #13).

Here this Court must decide if the *time* allowed - less than 30 days for a *pro se* appellant to question and

brief the 40 page opinion and multiple orders and other decisions of the district court - is fair and just, considering protected rights?

The question could be considered in either a good faith or bad faith situation or both. Petitioner presents both, but believes, as a result of years of *pro se* experience and the fact that he should have won first in the state and secondly at the district court, that it is a bad faith situation.

The facts have are explained above under Procedural History, 6th Cir. p 8. See App I & J, 57a-58a.

Time issues have been raised in some cases in this Court. Recently this Court considered an "insufficient time" argument in an attorney represented case, but virtually ignored the right. *Weisgram v Marley Co.*, 528 US 440, 455 (2000) (Fn 11) (14 days for petition for rehearing).

In *New York Times v US*, 403 US 713, 755 (1971) the dissent argued: ". . . because of the time elements the Government had *not been given an adequate opportunity to present its case* to the District Court." (The government was seeking an injunction to prohibit publication of a study about its Viet Nam policies.) They also said "the Court has been *almost irresponsibly feverish* in dealing with these cases." (emphasis added) The dissent also argued that in the rush to judgment 7 questions that should have been answered were never touched. *Id.* 753-754. (Bush, and *pro se* litigants certainly have had these experiences.)

The dissent in *Walters v National Assoc.*, 473 US 305, 350 (1985) " `recognize[d] the *vital importance* of the time element' in constitutional challenges . . " (Quoting *Aaron v Cooper*, 357 US 566, 567 (1958) (emphasis added).

In an different context this Court held that it has the power to decide what is a reasonable time.

> "The return should have been made within a *reasonable time; and what is a reasonable time is always a question for the courts* when facts are not disputed. *Wiggins v Burkham*, 10 Wall 133 [77 US, XIX, 886]."
>
> * * *
>
> "Time must be given for careful examination and scrutiny;" *Cooke v US*, 91 US 389, 402-403 (1875).

This Court needs to decide what a reasonable time is to brief here. Presuming a *pro se* appellant could somehow get an appeal brief done in only 30 days or less, there are unjust consequences he likely will be forced to suffer. "[T]he effect of this * * * is to *force a litigant to abandon what may be a meritorious claim[s]* in order to . ." *Adkins v E.I.DuPont*, 335 US 331, 340 (1948) (emphasis added) complete the appeal brief on time. (Recall above Bush had to abandon the sanctions response? _____)

Forcing *pro se* appellants to abandon *any* meritorious claim is unjust and contrary to Due Process of Law and the First Amendment right of speech and petition for redress of grievances and their substantive rights. Furthermore, it could violate Equal Protection, if appellants with attorneys are granted longer times.

Enforcing civil rights by means of *pro se* lawsuits is not an easy risk-free task with a pot of gold at the end of every one.

> "Judge Learned Hand described his feelings: `After now some dozen years of experience I must say that as a litigant I should dread a

> lawsuit beyond almost anything else short of sickness and death.' 3 Lectures on Legal Topics, Association of the Bar of the City of New York 105 (1926)." *Nixon v Fitzgerald*, 457 US 731, 763, 73 L Ed 2d 349, 102 S Ct 2690 (1982) (Fn 6)

After 25 years, Petitioner knows very well the feeling, and he does not have the resources of a judge. Here, after enduring the hardships and injustices of summary judgment and other unjust orders in the district court, the least that should be done in this case is to provide a reasonable time - well beyond 30 days - to file the appellant's brief. But there is much more to consider. What if the short time has been deliberately imposed on *only pro se* appellants?

Petitioner believes that the short time has been deliberately imposed so "minority speakers can be silenced" *Feiner v New York*, 340 US 315, 328 (1951) (J. Black dissenting) with the goal of effective denial of access to full and meaningful appeal by right, virtually insuring that the District Court decision is not reversed or even heard by the 6th Cir. and this Court.

In other Bush cases, various progressively short times to brief were imposed. *Bush v Zeeland Bd. Ed.*, #97-1576 (all 6th Cir.) Brief Sch. dated 6-5-97, due 7-8-97 (33 days) (dismissed by clerk *allegedly for untimeliness*, even though the appeal was filed within the 30 day time extension allowed by the district court) (Pet. 92-1167, cert den. 507 US 920 (2-22-93), reh den. 507 US 1045, (4-19-93)); *Bush v Zeeland Board Public Works*, #97-1739, dated 2-11-98, due 3-13-98 (30 days) (dismissed - no brief); *Bush v Klunder*, #97-00541, dated 6-15-99, due 7-26-99 (41 days) (dismissed - no brief); *Bush v Donkersloot*, #97-00051, dated 1-12-98, due 2-9-98 (28 days) (dismissed - no brief); *Bush v Zeeland,*

Michigan, #03-1080, dated 1-21-03, due 2-18-03 (*28 days*) (Bf. sch. mailed 1-21-03, rec'd 1-25-03) (effectively 24 days) (Disposition - brief filed - *expedited* affirmance). (Note: Extensions of time were moved for and granted in some of the above cases, but with other pressing litigation, that also is time consuming. Priorities had to be decided as to relative importance of each case and hence cases were not briefed where it was felt they should be and had grounds to be reversed *in a just court*.)

(Fn 3 In #02-1711 (6th Cir) Bush filed an appeal of writ of *habeas corpus* for a *pro se* friend, Kennedy, who was thrown in jail on an alleged contempt for representing himself in a normal fashion. Bush was *not given any briefing schedule*. They refused to relabel the case. (46a) In #00-1647, Bush appealed denial of habeas corpus petition for 73 year old man whom he believes was thrown in mental hospital for 8 months without adequate counsel or Due Process. *No brief time was allowed*. (45a))

Compare these short brief times with the 6th Cir. average time to decide a non *pro se* case of 18 months. (See news sources.) Petitioner has no way to investigate how long of brief times are granted attorneys.

Furthermore, the mailing time (3 days) comes off from the *appellants* brief time.

Mr. Bush in his now 6 Petitions to this Court has never been able to file one in the 90 days allowed. In every one an extension of time was granted and likely for all 60 days allowed and all of it was needed.

This is a current issue for many others. The Michigan Bar is at this time opposing the proposed shortening of briefing time at the Michigan Court of Appeals. See michbar.org/news/ 10/1/03.

Considering these facts, what is a reasonable time? How much time at a minimum should be allowed? Do the same times apply to Bill Gates and Microsoft? *US v Microsoft*, (2001, DC Cir). Do attorney represented cases have longer times to brief? What about times to brief in other circuits? Mr. Bush has no way to discover the answers to these questions, therefore, he cannot argue they are unequal, but there is that possibility.

3. PRO SE LITIGANTS NATIONWIDE NEED PROTECTION OF THEIR RIGHTS BY THIS COURT.

Pro se litigants make great sacrifices of time, money and all other areas of life to pursue Justice, protect Federal and state Constitutions and to protect their own and others rights. But they are despised by the judiciary. That is why they need this Court's protection. They need protection from biased unethical judges, unethical government attorneys, and other less than ethical judicial officials - clerks and court reporters - that only this Court can provide.

Congress long ago attempted to protect *pro se* litigants in 28 USC 1654. But it is like many other unenforcable rights *pro se* litigants allegedly have, an empty deceptive promise of Justice -unless this Court gives it substance. *Pro se* litigants are the current unidentified and ununified minority without a voice, in contrast to blacks and the NAACP.

In addition to protection of their time to speak via appeal briefs, *pro se* civil rights plaintiffs need protection from total obstruction of justice by elimination of their rights to sue (access), speak in court and be heard, to relief and not be treated substantially different than attorney represented cases. Here Bush

(and other *pro se*. 37a-38a;) has clearly been, in effect at least, barred from ever filing another lawsuit against Respondents, even though he still lives in the district, by sanctions, injunction, bond, and attorney fees. App D, 36a-43a, App E, 47a-48a, App F & G, 49a-54a. (Note: Bushs already paid $13,000 for attorneys fees in a case they should have won in federal court. 45a, n 13. Now they make less than $13,000. See 51a)

Obviously, strict scrutiny should be applied to all these sanctions. Especially here where it is meant to conceal obstruction of justice.

This Court has never directly decided a case where discrimination against *pro se* has been a central issue, even though Bush has made it an issue several times. It should accept this case.

Protection Needed From District Courts and Sixth Circuit

Petitioner is convinced beyond a reasonable doubt that anti-*pro se* bias in the 6th Circuit is at epidemic levels. In fact, Bush knows they engage in deliberate obstruction of justice in *pro se* cases and coverup similar obstruction of justice by district courts, especially the Western District of Michigan. *Becker v Montgomery*, 532 US 757 (2001) (unanimous) in fact is a possible confirmation of this charge, since it strangely enough also came from the 6th Cir. They love to use minor technicalities to dismiss cases (See above time re: F1 appeal to 6th) They know full well they are safe because 99.99% will never be discovered by this Court because of its crowded docket and no other door is open.

Furthermore, many *pro se* cases are either not identified as such or are not available for computer search. (Ex. *Bush v Zeeland Bd. Ed.*, #97-1576)

In addition, the 6th Cir. leaves the pivotal questions unanswered, and instead deliberately provides an answer that ditches the appeal and protects the district court judges reputations. (See *Bush v Zeeland, Michigan*, #03-1080 and compare to briefs filed on appeal and record.)

One likely reason for these coverups and obstruction of justice decisions is the many years of close associations and friendships that have developed with the district court judges serving on panels of the 6th Cir. by assignment.

4. EVIDENCE OF CLOSE ASSOCIATIONS BY DISTRICT JUDGES SERVING ON A SUPERVISING COURT OF APPEALS RAISE ISSUES OF NATIONAL IMPORTANCE

28 USC 455(a) requires disqualification of judges when their "impartiality might reasonably be questioned." It also mentions "associations" in regards to disqualification of judges, but in a different way than presented here. *Id.* at (b)(2). 28 USC 144 allows litigants to challenge a judge for "bias or prejudice either against him or in favor of any adverse party."

Petitioner is convinced that the facts presented reveal lack of impartiality because of associations and friendships formed to the point that obstruction of justice is the direct result. But even if it is not a direct result, the possibility of obstruction of justice requires this Court to intervene and directly supervise the impartiality of the judges of the 6th Circuit Court of Appeals and lower courts so that justice may be the consistent outcome. Furthermore, the district court, and the court of appeals, judges are prejudiced in favor of government and attorney represented parties, and against *pro se* litigants.

Computer searches reveal some interesting and alarming facts about the associations of district judges with court of appeals judges in the 6th Circuit Court of Appeals that call into question the ability of all these judges to be impartial, fair and just. This is a matter of great national importance that this Court should review under its supervisory powers over the judicial system because confidence in judicial integrity is at risk.

Judge Bell

One recent search found that the district judge in this case, Robert Holmes Bell, has served, since 1989, on both the district court and the 6th Circuit Court of Appeals by appointment. In fact, as best as Petitioner can determine, he has served by appointment on *over 400 appeals* at the 6th Cir. That number is likely well short of the actual number, since some, if not many, *pro se* cases, where they are effectively dismissed at the 6th Cir. and are never logged onto computers available for search. (See example: *Bush v Zeeland Bd of Ed., et al.*, #1:96-cv-420; #97-1576 (6th Cir.); U.S. Pet. #97-1645, cert den.) (Note: Bell has been the judge in the following Bush cases besides this one: *Bush v Zeeland, Mich.*, #1:02-CV-565 (W.D. Mich); #O3-1080 (6th Cir, 2003) (affirmed, reh. den.) (soon to be petitioned to this Court.) App 46a; *People v Bush*, (Mich. case removed to Fed. Court) #1:01-CR-177 (W.D. Mich) (civ. rights challenge to misdemeanor charge against Bush for allegedly unsecured refrigerator not owned by Bush - "summarily remanded") App 46a.

Judge Enslen

Another search found that District Judge Richard A. Enslen, Western District of Michigan, (still currently sitting) has served by assignment on various 6th Circuit panels since 1981. See *US v Berry*, 657 F.2d

270 (1981). Enslen has, as far as Petitioner can find, served on *over 180 appeals*. The same under recording circumstances above apply. The number may be much greater. (Note: Enslen was the judge in Bush's first federal civil rights case regarding his 3 suspensions without any due process and prior events that was dismissed on summary judgment based on the unconstitutional concepts of res judicata and collateral estoppel. Appeal barred by technicality. *Bush v Zeeland Bd of Ed., et al.*, #1:96-CV-420 (W.D. Mich); #97-1576 (6th Cir.); U.S. Pet. #97-1645, cert den. 9a-12a; also judge in *Bush v Klunder, et al*, #1:97-CV-541 (W.D. Mich.), (civ. rts. viol. 2nd Am. & 4th Am. rights, - Def. evaded service by waiver then moved to dismiss); #99-1362, (6th Cir.) (dismissed - no brief) 45a.

Judge McKeague

Western Michigan District Judge McKeague (still currently sitting) has sat by assignment on the 6th Circuit panels since 1993. See *Mawby v Zant*, #93-3583. He has sat on *over 175 appeals*. (McKeague was the unjust judge in *Bush v Zeeland Bd Public Works, et al* WDMi# 1:96-CV-622 (W.D. Mich) (sanctions against Bush), 6th Cir #97-1739 (no brief filed) 38a, 45a; and *Bush v Ottawa Co. Jail*, #1:00-cv-206 (W.D. Mich) #00-1647 (6th Cir.) (habeas corpus for 73 year old single man thrown in mental hospital without due process for 8 months by another unjust state judge). App 45a-46a; and also *Bush next friend of Kennedy v Kent Co. Jail*, # 1:02-cv-268 (W.D. Mich); #02-1711 (6th Cir.) (*pro se* def. Kennedy thrown in jail by unjust state judge allegedly for contempt for noncontemptuously representing himself). App 46a.)

Judge Hillman

Judge Hillman (W.D. Mi., now retired) sat by assignment since, at least, 1994. See *Shaffer v US*, #93-

6037. He has sat on *over 100 appeals*, as close as Bush can tell. Hillman was the judge in *Bush v Donkersloot, et al.*, #1:97-cv-51 (W.D. Mich) (civil rts to enforce Double Jeopardy clause - denied and dismissed.); #97-2341 (dismissed - no brief filed) App 45a.

(Note: Petitioner is not providing the evidence here, because he believes this Court has the ability to search it much better than he does.)

Obviously, this is not a comprehensive survey of all the district judges from even the Western District of Michigan serving on the 6th Cir. Others are known to have served from the Eastern District of Michigan also.

Substantial questions arise as to whether these judges formed friendships by these associations and as to what effect they have had on justice of the decisions. At the least, it can be assumed that some coverup of bad decisions occurred to save the reputations of friendly, nondissenting district judges. The good-ole-boy and who-you-know principles at work.

Other substantial questions arise as to whether they were paid extra to serve on the 6th Cir. and as to whether they deliberately and unjustly cleared their own dockets so that they could serve on appellate courts. Furthermore, Petitioner has substantial questions about the level and quality of justice provided in the cases both at the district court and the 6th Cir. Petitioner knows for a fact that justice was not provided in his cases. In how many others was justice denied?

The questions raised are of national importance since they concern the basic integrity of the judiciary, impartiality and the quality of JUSTICE in a major portion of the nation.

5. THE MERITS RAISE ISSUES OF NATIONAL IMPORTANCE

A decision on the merits would greatly assist the Court in viewing how widespread and villainous the extent of obstruction of justice and bias against *pro se* litigants is. This petition on procedure can only touch on a very small amount. On the merits, this Court, Petitioner sincerely believes, will find that Petitioner should have won long ago in state courts, in his first federal suit at the district court or appeal and in this one at the district court. Then this case would not be here. This court will also see that judges (state and federal) knowingly and willfully obstruct justice in *pro se* cases. It may then take an active role in restricting such violations of fundamental rights by judicial officials within its authority and control and also provide greater protections for *pro se* litigants. Obviously, Petitioner is somewhat restricted from raising the merits issues by the court of appeals dismissal beforing decision on the merits for not timely filing a brief and the space factor.

Summary judgment was granted on the "narrow grounds" of preclusion, without discovery. App B, 2a-4a. Apparently, according to the district court, *res judicata* and collateral estoppel totally prevent 42 USC 1983 civil rights lawsuits, if a state so determines. Has the 14th Am. has been overruled?

At issue are First Am. rights re: briefs, testimony, arguments; 4th Am. rights re: mental search and psycho evaluations; privacy rights and psycho evaluations; constitutionality of 28 USC 1738 and state Tenure law; *res judicata*, collateral estoppel; *Kremer v Chemical Construction Corp.*, 456 US 461 (1982) and Worker's Compensation and teacher tenure agency rulings; Supremacy and precedents; sanctions,

injunction, bond, fees re: 1st Am. speech, access, Due Process; impartial decisionmakers - judges, board members and agents; obstruction of 7th Am; etc. All demand their day in court. (See 7a-8a; 30a-36a).

This is the last chance this Court will have to see how outrageously and how frequently its numerous precedents protecting Petitioner's Constitutional rights have been deliberately violated.

6. THE DAMAGES RAISE ISSUES OF NATIONAL IMPORTANCE

The defendants and their co-conspiring and co-offending teacher's union (fn*) have created havoc in the life of Bush and his immediate and extended family and great damages beyond description here. For a small sample that does not include lost wages, opportunities, etc., see 6a-7a, 17a-18a, 51a-52a. These are damages from working for the government and at the same time attempting to exercise protected rights. Rights supposedly protected by government. The lesson is, if you want rights and to avoid damages, don't work for the government!

---

* The union has not raised one finger to help Bush with any of the litigation regarding suspensions, change in status or this dismissal. They have deliberately refused to represent Bush because he is not a member and does not pay dues. They have done everything they could to get him out.

Other damages occurred to Bush's students. (See Bush Aff., trans)

CONCLUSION

Chief Justice Story warned us of the fragility of our Constitution, structure of government and their sources of preservation.

> "It may, nevertheless, perish in an hour, by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created by the virtue, public spirit and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them." *A Familiar Exposition of The Constitution of The United States*, by Joseph Story, p 326, Regenery Gateway, Inc., cr. 1986.

The "People" cannot keep anything without JUST, fair and ethical courts and full access to them. *Pro se* civil rights plaintiffs are substantial "keepers" of JUSTICE and the Constitution. Review should be granted to protect the Nation's foundation - the Constitution.

For the reasons above Petitioner requests that the case be accepted, the right of appeal be reinstated and a decision be made on the merits. In short, that Justice be done.

Respectfully submitted,

Gerald D. Bush
724 E. Central
Zeeland, Mich. 49464

APPENDIX
DISTRICT COURT OPINIONS,
ORDERS AND JUDGMENTS

Appendix A, First Case Management Order, (July 9, 2002) (Magistrate, denying discovery & re: time for sj) 1a

Appendix B, Order, (Aug. 13, 2002) (J. Hillman & M. Scoville,) (deny Pl. Mot. discovery, ext. of time.) 2a

Appendix C Order, (Oct. 22, 02) (motion ext. time moot, M. Scoville) 5a

Appendix D Opinion (March 6, 03) (summary judgment, sanctions, injunction against plaintiff, CJ Bell) 6a

Appendix E Order (March 6, 03) (summary judgment, sanctions, injunction against plaintiff, CJ Bell) 47a

Appendix F Memorandum Opinion, Costs And Attorney Fees (April 18, 2003, CJ. Bell) 49a

Appendix G Judgment for Costs And Attorney Fees (April 18, 2003, CJ. Bell) 54a

Appendix H Order Deny Relief From Judgment (April 18, 2003) (reh./recon., CJ. Bell,) 55a

SIXTH CIRCUIT ORDERS

Appendix I Briefing schedule (May 22, 2003) 57a

Appendix J Clerk's order of dismissal (July 8, 2003) 59a

SUPREME COURT

Appendix K Extension of Time 60a

Appendix A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff
-vs-

Case No. 1:01 cv 672
Hon. Douglas Hillman

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

FIRST CASE MANAGEMENT ORDER

The court conducted a partial case management conference, Fed. R.Civ.P. 16, on July 9, 2002. As a result IT IS ORDERED as follows:

A. All proceedings in this matter, including discovery and Rule 26 disclosures, are hereby stayed pending decision of defendants' summary judgment motion.

B. Plaintiff shall file a response to the pending summary judgment motion no later than August 6, 2002; defendant may reply within 14 days of service of the response.

C. The scheduling conference is adjourned without date, pending resolution of the motion for summary judgment.

DONE AND ORDERED this 9th day of July, 2002.

/s/ Joseph G. Scoville
Joseph G. Scoville
US Magistrate Judge

[stamped] TRUE COPY
signed original filed electronically
Ronald C. Weston, Sr., Clerk

Appendix B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff

Case No. 1:01 cv 672

-vs- Case No. 1:01 cv 672
Hon. Douglas Hillman

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

ORDER

This is a civil action by a former employee of the Zeeland Public Schools. Plaintiff's *pro se* complaint asserts a claim under 42 USC sec 1983 arising from acts and omissions leading up to his termination from employment as a teacher in 1993. I conducted a case management conference pursuant to Fed. R. Civ. P. 16 on July 9, 2002. At the case management conference, defense counsel brought to my attention the pendency of defendants' motion for summary judgment, in which defendants seek dismissal of this action on the basis of *res judicata* and collateral estoppel. Defendants' motion is grounded upon previous decisions of the Michigan state courts, Judge Enslen of this court, and Michigan administrative agencies. By their pending motion for summary judgment, defendants assert that the present action is precluded by the findings and judgments in the previous cases. Because of the legal nature of the issues raised in defendants' motion, I determined that discovery should be stayed pending resolution of the motion. (*See* First Case Management Order, docket # 19).

Two motions by plaintiff are presently pending before the court. The first is plaintiff's motion for extension of time to allow him to retain counsel. This motion was denied orally at the Rule 16 scheduling conference. Plaintiff has had nearly a decade to procure counsel. He is free to retain counsel now or at any time during the length of this case. The case will not, however, be delayed for this purpose.

Plaintiff has also filed a motion for leave to conduct discovery and to extend indefinitely the time in which he must respond to the pending motion for summary judgment. The request to allow discovery does not identify any relevant factual issue for which discovery is required in order to respond to the motion. As noted above, defendants' motion raises only *res judicata* and collateral estoppel. Therefore, the issues raised by the motion are principally legal in nature. Plaintiff does not identify the nature of discovery that he seeks or the reasons why discovery might be helpful. A party seeking to postpone consideration of a motion for summary judgment on the ground that discovery is necessary is required to file an affidavit justifying his request by reference to specific discovery of material facts that would affect the outcome of the motion. Fed. R. Civ. P. 56(f); see *Abercrombie & Fitch Stores, Inc. v American Eagle Outfitters, Inc.*, 280 F.3d 619, 627 (6th Cir. 2002); *Cacevic v City of Hazel Park*, 226 F.3d 483, 488-89 (6th Cir. 2000). Plaintiff has not done so. Even if plaintiff's motion and brief were considered an affidavit, they would be insufficient under Rule 56(f). Plaintiff's brief does not engage the substance of defendants' motion and fails to recognize the narrow grounds upon which the motion is based. Defendants' motion for summary judgment on the basis of *res judicata* frames the question whether plaintiff's present claims constitute the same cause of action as that decided in a previous case or cases, such that plaintiff brought or should have brought the present claims in the previous action. Defendants' motion on the grounds of collateral estoppel raises the question whether legal or

factual issues raised in the present case were fully and fairly litigated and necessarily decided in a previous case. The information necessary for the court to rule on these issues is contained in the official records of the previous lawsuits or administrative proceedings. It is unclear how discovery would be necessary, or even relevant, to the issues framed by defendants' motion.

Plaintiff has failed to establish grounds for any of the relief he seeks. Accordingly:

IT IS ORDERED that plaintiff's motion for an extension of time in order to retain counsel (docket #17) be and hereby is DENIED.

IT IS FURTHER ORDERED that the plaintiff's motion to allow discovery and for an extension of time in which to respond to the motion for summary judgment (docket #25) be and hereby is DENIED. Plaintiff is ORDERED to file a response to the pending motion for summary judgment no later than **August 21, 2002**. Defendants may reply within fourteen days thereof. After the expiration of these deadlines, the motion for summary judgment will be considered ready for decision.

DONE AND ORDERED this 13th day of August, 2002.

/s/ Joseph G. Scoville
US Magistrate Judge

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signed original filed electronically
Ronald C. Weston, Sr., Clerk

Appendix C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff

-vs- Case No. 1:01 cv 672
Hon. Douglas Hillman

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

ORDER

Pending before the court is plaintiff's "Motion to Amend Motion to Allow Discovery and to Extend Time to Respond to Det. Motion for Summary Judgment Including and By Amending the Time to Respond to Def. Motion for Sanctions Also For Same Reasons." (docket #30). Upon review of the record, it appears that plaintiff has responded to both the motion for summary judgment by defendants and the motion for Rule 11 Sanctions. (docket #35). Accordingly:

IT IS ORDERED that plaintiff's motion (docket #30) be and hereby is DISMISSED as moot.

DONE AND ORDERED this 22nd day of October, 2002.

/s/ Joseph G. Scoville
United States Magistrate Judge

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signed original filed electronically
Ronald C. Weston, Sr., Clerk

Appendix D

UNITED STATES
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH,
Plaintiff,
v.
ZEELAND BOARD OF EDUCATION, et al,
Defendants.

Case No. 1:01-cv-672
Honorable Robert Holmes Bell

OPINION

This is an action brought *pro se* by a former employee of the Zeeland Public Schools. Plaintiff last worked as a teacher for the Zeeland Public School District in 1993. During the decade which followed, plaintiff initiated numerous unsuccessful lawsuits against the school district, its employees, and affiliated individuals. On October 18, 2002, plaintiff began this lawsuit by filing a two-page complaint. On February 15, 2002, plaintiff filed his First Amended Complaint. (docket # 3). Plaintiff's First Amended Complaint names four defendants: the Zeeland Board of Education, Superintendent Gary Feenstra, and School Board members Tom Brock and Don Lake. N1

Plaintiff's First Amended Complaint is far from a model of clarity. Under the heading "FACTS," plaintiff identifies the basis for his latest lawsuit:

> Plaintiff Gerald Bush has been an employee of the Zeeland Public Schools since 1969. Due to the harassment and unlawful acts and unconstitutional actions taken against him by his supervisor Michael Z. Jones, in and before 1993, Mr. Bush was required to take sick leave. Jones was Principal of Zeeland High School at the time and Personnel Director. Defendants were "deliberately indifferent" to these violations

> and/or conspired with Jones to terminate Plaintiff.
>
> Mr. Bush filed for Workers Compensation and had a trial lasting almost 2 years. Defendants subpoenaed information from Mr. Bush's psychologist and used it against him. Subsequent to the conclusion thereof, Mr. Bush was terminated unlawfully and unjustly again using the same information. Defendants did not grant Mr. Bush a pre-termination hearing. Zeeland Public Schools has violated the Plaintiff's rights of Due Process of Law by not granting a pre-termination hearing before taking action to terminate his employment and rights thereof with Zeeland Public Schools and other acts in retaliation for Mr. Bush's lawsuits, free speech therein and defending his Constitutional and legal rights.

(First Amended Complaint, p. 3, docket # 3). After this statement, plaintiff lists ten separate counts:

1. Violation of plaintiff's privacy rights under the Ninth Amendment;
2. Violation of plaintiff's free speech rights under the First Amendment;
3. Violation of plaintiff's due process rights under the Fourteenth Amendment by not providing plaintiff with a pre-termination hearing;
4. Violation of plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment;
5. Violation of plaintiff's Sixth Amendment and due process "right to face and confront his accusers;"
6. Violation of plaintiff's "state granted property rights in employment" in violation of the Fourteenth Amendment;
7. "Violation of the US Constitution Supremacy Clause by Michigan's teacher tenure statute;"

8. Violation of defendants' "policy on discrimination in the workplace;"
9. Conspiracy to deprive plaintiff of "multiple rights;" and
10. Deliberate indifference "to multiple and continued violations of plaintiff's substantial rights."
(*Id.* at 4-5). Plaintiff seeks relief in the form of monetary damages in excess of $ 50,000 "for all back wages unjustly denied him, including retirement, monetary equivalent of medical, dental, and life insurance benefits, all compensatory damages, punitive damages and injunctive and declaratory relief."

On July 8, 2002, defendants filed the motion for summary judgment now before the court. (docket # 21). n2 Also before the court is defendants' August 19, 2002 motion to impose Rule 11 sanctions against plaintiff. (docket # 32). For the reasons set forth herein, defendants' motions will be granted.

Applicable Standard

Summary judgment is appropriate when the record reveals that there are no genuine issues as to any material fact in dispute and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *APJ Assoc., Inc. v. North Am. Philips Corp.*, 317 F.3d 610, 614 (6th Cir. 2003); *Redding v. St. Eward*, 241 F.3d 530, 532 (6th Cir. 2001); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1009 (6th Cir. 1997) *(en banc)*. The standard for determining whether summary judgment is appropriate is "whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *See Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1385 (6th Cir. 1994) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)); *see also Dudley v. Eden*, 260 F.3d 722, 725 (6th Cir. 2001); *March v. Levine*, 249 F.3d 462, 471 (6th Cir. 2001). The court must consider all pleadings, depositions, affidavits, and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,

475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986); *Sommer v. Davis*, 317 F.3d 686, 690 (6th Cir. 2003).

Facts

The following facts are beyond genuine issue. Plaintiff became a shop teacher at Zeeland Public Schools in 1969, and he achieved tenure in approximately 1971. (Plf. Aff., P 2, docket # 32). Plaintiff last worked as a teacher for the Zeeland Public Schools in 1993. Plaintiff "attended the first day of 1993-94 [school year], called in sick the 2nd day and [has] not been back." (Plf. Aff., P 19).

A. Plaintiff's Prior Federal Lawsuit

On May 24, 1996, plaintiff filed a lawsuit in this court against numerous defendants associated with the Zeeland Public Schools. *Bush v. Zeeland Bd. of Educ. et al.*, 1997 U.S. Dist. LEXIS 3393, No. 1:96cv420 (W. D. Mich.). Plaintiff's complaint named ten defendants:

1. Zeeland Board of Education;
2. Michael Z. Jones, past Principal of Zeeland High School and Personnel Manager for the Zeeland Schools;
3. Kenneth Harper, Superintendent (1979 to 1993);
4. Jay Klinge, Assistant Principal of Zeeland High School;
5. Zeeland Education Association;
6. Michigan Education Association;
7. William Robertson, MEA Representative;
8. James Galer, MEA Representative;
9. Robert Larsen, MEA Representative; and
10. Mary Ann Zimmerman, MEA Representative.

Plaintiff alleged that defendants violated his rights under the First, Fourth, Fifth, Ninth, Thirteenth and Fourteenth Amendments to the United States Constitution. Plaintiff asserted claims under 42 U.S.C. §§ 1981, 1983, 1985, 1988, and 2000 *et seq.* Plaintiff also claimed violations of state law

under "the statutes, ordinances, regulations, customs and usages of the State of Michigan," citing Michigan Public Act 4 of 1937, M.C.L. § 38.71 *et seq.* and Michigan's teacher tenure statute, MICH. COMP. LAWS § 38.101, *et seq.*

On February 27, 1997, Chief Judge Richard Alan Enslen entered judgment in favor of defendants, finding no merit in any of plaintiff's claims. (docket # 23, Ex. A). n3 Plaintiff's section 1981 claim was meritless because plaintiff, a white male, had not alleged or shown that he had been discriminated against on the basis of race or ethnicity. (Op. 6). Judge Enslen found that plaintiff's section 1983 claim against the union defendants was meritless because the defendants did not act under color of state law. (Op. 6-7). Judge Enslen granted summary judgment in favor of the Zeeland Board of Education on plaintiff's section 1983 claim. (Op. 8-9). Judge Enslen found that plaintiff's section 1983 claim against the superintendent, principal, and assistant principal in their official capacities was simply another way of pleading his claim against the Zeeland Board of Education. (Op. 9-10). Judge Enslen's opinion recited a history of legal actions by plaintiff in Michigan's courts, the Teacher Tenure Commission, and the United States Supreme Court. This history need not be repeated herein, but is incorporated by reference. (Op. 13-16). Judge Enslen found that collateral estoppel barred most of plaintiff's section 1983 claims against the superintendent, principal and assistant principal in their individual capacities. (Op. 17-19). Judge Enslen found that defendants were entitled to summary judgment on the merits of plaintiff's claims against defendants related to plaintiff's 1993 suspension (Op. 19) and subsequent decisions concerning plaintiff's employment through the 1995 school year.

> The remaining claims that are alleged against all three defendants are that the defendants did not rehire plaintiff at the end of the 1993-94 school year, and the

> defendants quit offering auto mechanics. Plaintiff cannot state a constitutional claim based on either of these allegations. Plaintiff stated in his complaint that he called in sick on the first day of school in 1993, continued to use his sick days, went on long term disability, and did not return to work the entire year. Furthermore, a school board's decision not to offer a particular type of elective does not give rise to a constitutional claim. (Op. 19).

Plaintiff's remaining claims were leveled against Principal Jones. Judge Enslen granted summary judgment in favor of Jones on plaintiff's claims of retaliation in violation of plaintiff's First Amendment rights. (Op. 20). The court found that plaintiff's First Amendment claim that he had been retaliated against because he was not a member of the teacher's union was utterly devoid of factual support. Judge Enslen granted summary judgment in favor of defendant Jones on plaintiff's First Amendment and Due Process Clause claims concerning plaintiff's 1993 suspension and the decision not to rehire plaintiff for the 1994-1995 school year. (Op. 20). Judge Enslen granted defendants' motion for summary judgment on plaintiff's claims under sections 1985 (Op. 21-23), 1988 (Op. 23), and 2000e (Op. 23). The court declined to exercise supplemental jurisdiction over plaintiff's purported state-law claims. (Op. 24-25).

After finding that defendants were entitled to summary judgment on all plaintiff's federal claims, Chief Judge Enslen considered defendants' motions for imposition of Rule 11 sanctions against plaintiff. (Op. 25). Judge Enslen found that plaintiff asserted numerous causes of action without even knowing the elements of a *prima facie* case under these statutes. (Op. 27). Plaintiff, a frequent litigant, should have been aware that his unsuccessful state-court cases would bar relitigation of those claims in

federal court. *(Id.)*. Judge Enslen found that, "Plaintiff's inclusion of many claims for which there was no basis, and of claims that had previously been litigated *and* had been previously dismissed *because* they had been litigated constituted a Rule 11 violation." (Op. 27). Judge Enslen gave plaintiff the benefit of a doubt that he may not have completely understood claim preclusion stemming from unsuccessful state litigation and did not impose monetary sanctions. (Op. 28). Judge Enslen did find that plaintiff's Rule 11 violations warranted injunctive relief. Judge Enslen's judgment states that "plaintiff shall not attempt to file any other actions with respect to the issues raised in the complaint." (Ex. A). The injunction also states, "plaintiff shall not file additional pleadings or motions in any federal court without first familiarizing himself with the Federal Rules of Civil Procedure." Plaintiff pursued an unsuccessful appeal of Judge Enslen's decision. On November 10, 1997, the United States Court of Appeals for the Sixth Circuit issued an order dismissing plaintiff's appeal for lack of jurisdiction. *Bush v. Zeeland Bd. of Educ.*, No. 97-1576, (6th Cir. Nov. 10, 1997). Plaintiff filed a petition for certiorari to the Supreme Court of the United States. (docket # 66). On June 10, 1998, the United States Supreme Court denied plaintiff's petition for *certiorari. See Bush v. Zeeland Bd. of Educ.*, 524 U.S. 904, 141 L. Ed. 2d 139, 118 S. Ct. 2061 (1998).

B. Plaintiff's Worker's Compensation Claim Asserting Psychiatric Disability

Plaintiff's First Amended Complaint in the present action alleges that he had a lengthy worker's compensation trial, during which defendants subpoenaed information from his psychologist, and that defendants subsequently used this information against him. It is therefore necessary to review the history of plaintiff's disability claim.

The record shows that on or about December 28, 1994, plaintiff filed a worker's compensation claim asserting disability on the basis of a psychiatric

impairment. Magistrate Richard J. Anderson of the Michigan Bureau of Worker's Compensation presided over the trial of plaintiff's claim. Plaintiff was represented at trial by Attorney Roy J. Portenga. The trial was a lengthy one, with the Magistrate Anderson hearing testimony on numerous dates between February 1996 and June 1997. (Ex. B). On May 23, 1996, during the trial, plaintiff testified that he had advised his psychiatrist, Dr. Beyer, that he had contemplated killing Principal Jones. n4 (Ex. I at 202). n5 Police officers were present during the trial to prevent any violent confrontation involving plaintiff from occurring. *(Id.)*. On July 28, 1997, Magistrate Anderson issued his decision finding that plaintiff had a personality conflict with Principal Jones, but plaintiff did not suffer from a psychiatric disability. (Ex. B at 7). Plaintiff appealed.

On June 29, 1999, the Michigan's Worker's Compensation Appellate Commission affirmed Magistrate Anderson's decision. (Ex. C). The Appellate Commission's decision quoted at length from Anderson's summary of plaintiff's psychiatric care and plaintiff's history of confrontations with Principal Jones:

> In reviewing the medical testimony elicited at trial, I found that the testimony of Howard G. Ager, M.D., a board certified psychologist, most credible. This physician was of the opinion that the Plaintiff had a rather passive/aggressive personality, obsessive personality style and that he was also somewhat paranoid. Dr. Ager, after an examination of the Plaintiff, could find no current objective signs of mental disability. This physician did feel, however, that the Plaintiff may have passive-aggressive-obsessive compulsive, and paranoid personality traits. This physician was of the opinion that the Plaintiff was a rather tenacious individual, when it comes to something that he believes in. Dr. Ager

> testified that in his opinion the Plaintiff appears much too dogmatic and convinced of his own opinions to be willing to listen to the insights or advice of another person.
>
> The Plaintiff points to the personality conflict he has with Principal Jones as being the cause of his emotional condition. The Plaintiff presented to me as a strong willed, single minded person who wants to vent his spleen against Principal Jones as a cause of his life's problems. But for the singular personality conflict with Jones, Plaintiff would still be working at Zeeland Public Schools or another system doing the same work. Plaintiff stated he could not return to work at Zeeland Public Schools because Jones was in charge. He did testify, however, that he could teach[] his specialty in another environment.
>
> To say that plaintiff has a litigious nature would be to engage in an understatement. A multitude of litigation has ensued after his leaving the school system. These included lawsuits and grievances against the school system, lawsuits against his union, lawsuits against former attorneys and litigation involving the City of Zeeland.
>
> My observation of Plaintiff disclosed no psychiatric disability. He is a highly intelligent person who is attempting to manipulate the legal system to justify his personal feelings about many issues.

(Ex. C at 52-53, quoting Ex. B at 6-8). The Appellate Commission affirmed the decision finding that plaintiff did not suffer from a psychiatric disability. (Ex. C).

On April 28, 2000, the Michigan Court of Appeals denied plaintiff's application for leave to appeal the Appellate Commission's decision "for lack of merit in the grounds presented." (Ex. D). On November 29, 2000, the Michigan Supreme Court denied plaintiff's application for leave to appeal, stating that it was not persuaded that questions presented should be reviewed by the court. (Ex. E). The Michigan Supreme Court issued an order on February 26, 2001, denying plaintiff's motion for reconsideration. (Ex. F). On October 1, 2001, the Supreme Court of the United States denied plaintiff's petition for certiorari. (*Bush v. Zeeland Pub. Sch. Bd. of Educ., et al.*, 534 U.S. 819, 122 S. Ct. 51, 151 L. Ed. 2d 21 (2001) (denying three petitions for certiorari by plaintiff), Ex. G). On January 7, 2002, the Supreme Court denied plaintiff's motion for reconsideration. (Ex. H).

C. Actions Taken Subsequent to Judge Enslen's February 27, 1997 Decision Related to Plaintiff's Leave of Absence and Abandonment of His Teaching Position

Plaintiff called in sick on the second day of the 1993-94 school year and never returned to work. (Plf. Aff., P 19). On or about November 17, 1997, the Zeeland Public Schools Board of Education passed a resolution regarding plaintiff's status with the school district. (Ex. J). Superintendent Gary Feenstra had assumed that, based upon the psychiatric disability claim plaintiff was then pursuing, that plaintiff desired to remain on leave of absence status, at least through the balance of the 1997-1998 school year. Superintendent Feenstra's efforts to have plaintiff confirm his intention or desire in this regard had proved unsuccessful. The School Board's resolution (Ex. J) classified plaintiff as being on leave of absence status from his last work on August 31, 1993 through June 30, 1998, the end of the 1997-1998 school year. The School Board indicated that plaintiff remained a tenured teacher of the Zeeland Public Schools, subject to all rights and obligations provided under the Master Agreement with the Zeeland

Education Association and the Tenure Act. The Board continued to pay the premium for plaintiff's health insurance coverage through January 31, 1998, even though the Board did not believe that such payment was required under the Master Agreement. Defendant Don Lake did not participate in the November 1997 meeting. Defendant Tom Bock abstained from voting on the resolution. (Ex. J). Superintendent Feenstra sent a copy of the School Board's resolution to plaintiff by certified mail. Feenstra's cover letter dated December 2, 1997, stated that he would appreciate hearing from plaintiff by April 1, 1998, concerning plaintiff's plans for the upcoming 1998-99 school year and whether plaintiff intended to ask the School Board for an extension of his leave of absence. (Ex. K).

Plaintiff subsequently filed an action with the Michigan Teacher Tenure Commission against Zeeland Public Schools objecting to the School Board's resolution. Among other things, plaintiff asked the Tenure Commission to "disqualify and disbar" defendant's attorneys. The Teacher Tenure Commission held that plaintiff's appeal of the Board's decision was untimely. It further held that it lacked authority to disbar licensed attorneys. Plaintiff appealed this decision to the Michigan Court of Appeals. On December 14, 1999, the Michigan Court of Appeals issued an unpublished, *per curiam* opinion affirming the Tenure Commission's decision. *Bush v. Zeeland Pub. Sch.*, 1999 Mich. App. LEXIS 2195, No. 213446, 1999 WL 33327154 (Mich. Ct. App. Dec. 14, 1999). On September 26, 2000, the Michigan Court of Appeals denied plaintiff's application for leave to appeal. *See Bush v. Zeeland Pub. Sch. Bd. of Educ.*, 463 Mich. 875, 618 N.W.2d 591 (Mich. 2000). On December 27, 2000, the Michigan Supreme Court denied plaintiff's motion for reconsideration. *See Bush v. Zeeland Pub. Sch. Bd. of Educ.*, 620 N.W.2d 851 (Mich. 2000).

On June 4, 1998, Superintendent Feenstra wrote a letter to plaintiff stating that he had not yet received

plaintiff's response to his December 2, 1997 letter concerning plaintiff's intentions concerning the upcoming 1998-1999 school year. He reminded plaintiff that his leave of absence expired on June 30, 1998. Superintendent Feenstra indicated that he would submit to the Board for its consideration any request for an extension received on or before June 30, 1998. In the absence of a response, Superintendent Feenstra would assume that plaintiff intended to return to his teaching duties for the 1998-1999 school year. (Ex. L).

On August 5, 1998, Superintendent Feenstra sent plaintiff a letter certified mail, return receipt requested. The letter notified plaintiff of Zeeland Public Schools' classes for the 1998-1999 school year began on August 25, 1998. It advised plaintiff of his teaching assignments for the 1998-1999 school year. (Ex. M). Superintendent Feenstra's letter then stated, "Because you have made numerous statements concerning workplace violence in various legal forums, before you will be allowed to return to active teaching duties, the Board of Education must have reasonable assurance that you pose no threat of violence to others in the school workplace. Your return to the active teaching assignment set forth above with the Zeeland Public Schools is conditioned on the Board receiving such assurance." (Ex. M). Plaintiff was advised of the date and time to appear for an independent psychological examination.

On August 14, 1998, plaintiff sent the following letter to Superintendent Feenstra:

> Mr. Feenstra
>
> This is a short note to inform you I do not intend to be evaluated on August 17, 1998, by your psychologist. There are several reasons some of which I will briefly mention here.
>
> I will not continue to waste my time, without pay, for the benefit of the Zeeland

> Public Schools. I have wasted literally 1000's of hours and years already without pay.
>
> Second, you intend to have me evaluated, but not the perpetrators, Mr. Jones and his union accomplices, all who are prejudiced against me for various multiple reasons.
>
> Third, no provisions have been made to protect me or my privacy rights.
>
> Maybe since I will not make the appointment you could send Mr. Jones to find out what is wrong with him and why he harasses some people making them quit or wish they had.

(Ex. N).

On August 19, 1998, Superintendent Feenstra wrote the following letter to plaintiff:

> We are in receipt of your letter of August 14, 1998, and we are aware that you did not attend the appointment with Dr. R. Scott Stehouwer, which had been scheduled for August 17, 1998, as you had been directed to do in my letter of August 5, 1998.
>
> This letter is to inform you that the School District insists that you submit to an independent psychological evaluation by Dr. Stehouwer on the subject of whether or not you pose a threat of violence to others in the school workplace before you will be allowed to return to your active teaching duties.
>
> We have arranged for another appointment with Dr. Stehouwer. You should report to his office on Friday, August 21, 1998, at 1:00 PM. Alternatively, you may see Dr.

> Stehouwer on Thursday, August 27, 1998. You should call Dr. Stehouwer's office as soon as possible to tell him which of these two appointments you prefer. His telephone number is 616-957-9112.
>
> The School District will pay you your contractual hourly rate for the time you expend in attending the independent psychological evaluation, including travel to and from that evaluation. You have already received a School District check for mileage. In addition, the results of that evaluation will be kept confidential and used only in connection with the determination of whether or not you pose a threat of workplace violence.
>
> When we have received Dr. Stehouwer's evaluation, we will contact you. Because the School District needs to have reasonable assurance that you do not pose a risk of workplace violence, we need Dr. Stehouwer's evaluation before you report to work. You should not report for work until we have contacted you.
>
> Your continued failure to meet with Dr. Stehouwer as directed, which is a necessary prerequisite to your return to work, will be deemed an abandonment of your employment with Zeeland Public Schools.

(Ex. O). Plaintiff came to Dr. Stehouwer's office on August 27, 1998, but refused to take any psychological tests.

Classes for the 1998-99 school year began on August 25, 1998. On September 1, 1998, Superintendent Feenstra wrote a letter to plaintiff concerning plaintiff's refusal to perform the psychological tests required by Dr. Stehouwer.

> We have been informed that, although you met with Dr. Stehouwer on Thursday, August 27, 1998, you refused to take the psychological tests, which are essential in order for Dr. Stehouwer to complete his independent psychological evaluation.
>
> We understand that you do not need an appointment with Dr. Stehouwer to take those tests. You do, however, need to call his office and tell them when you will be coming to take the tests. We are hereby directing you to report to Dr. Stehouwer's office as soon as possible, and no later than Friday, September 5, 1998.
>
> Your continued failure to comply with Dr. Stehouwer's request that you take and complete the psychological tests, which are an essential part of his independent psychological evaluation, will be deemed an abandonment of your employment with the Zeeland Public Schools. In addition, we will not pay you for the time you have spent with Dr. Stehouwer unless, and until, you have completed that process.

(Ex. P).

On September 14, 1998, Dr. Stehouwer wrote a letter to Superintendent Feenstra. (Ex. Q). Dr. Stehouwer advised Superintendent Feenstra that plaintiff's refusal to take the necessary tests prevented him from completing the psychological evaluation process. Dr. Stehouwer went on to state, "In my opinion it certainly is appropriate and, indeed, necessary to undertake an evaluation of Mr. Bush prior to any return to active teaching duties with the Zeeland Public Schools." (Ex. Q, P 3).

On September 23, 1998, nearly a month into the new school year, Superintendent Feenstra advised plaintiff that

he intended to recommend to the School Board that they find that plaintiff had abandoned his teaching position with the Zeeland Public Schools. Plaintiff was advised that the Board would consider Superintendent Feenstra's recommendation at their regular public meeting on October 19, 1998. (Ex. R). The letter advised plaintiff that he could submit a written statement to the Board prior to its meeting or he could appear in person and provide the Board with any information he believed the Board should have prior to making its decision. Plaintiff elected not to submit a written statement and did not appear at the October 1998 meeting. On October 19, 1998, the Zeeland Public School Board adopted a resolution finding that plaintiff had abandoned his teaching position with the Zeeland Public Schools. (Ex. T).

D. Tenure Commission and Related Proceedings Regarding Plaintiff's Abandonment of His Teaching Position

In November 1998, plaintiff filed an appeal to the Teacher Tenure Commission of the School Board's decision finding that he had abandoned his teaching position. (TC # 98-40, Ex. U). On December 14, 1998, plaintiff filed an amended claim of appeal. (Ex. V).

On February 2, 1999, plaintiff testified before Administrative Law Judge Tessema Berga of the Michigan Teacher Tenure Commission regarding the advance notice and opportunity to be heard plaintiff had enjoyed prior to the Board's adoption of the resolution finding that plaintiff had abandoned his teaching position.

Q You then received the letter of September 23rd, 1998, from Mr. Feenstra which is Exhibit 11; correct?
A Yeah, I believe that's correct.
Q And you read it when you received it?
A I read it.
Q And you were aware after reading it that Mr. Feenstra was telling you that he was going to present his

recommendation of abandonment to the board of education at its meeting of October 19th, 1998; correct?
A Yeah, I guess he says that in the last paragraph.
Q And he told you that you could attend the meeting and provide information you believed the board should have concerning his recommendation of a finding of abandonment; right?
A I guess that's what he says.
Q And he said in addition to that, you could submit a written statement to the board on that subject; correct?
A I guess that's what he says.
Q You did not appear before the board of education?
A I did not.
Q And you did not submit any written response or input to his recommendation?
A I did not.
Q You did not respond in any way. Is that a fair statement?
A That is fair.

(Ex. S at 72-73). Plaintiff testified that he had received a copy of the Board's October 19, 1998 resolution finding that he had abandoned his teaching position. (Ex. S at 74).

On March 29, 1999, plaintiff submitted his brief in case No. 98-40 before the Tenure Commission. (Ex. W). Plaintiff's opening paragraphs expressed anger "that the system doesn't work, that law and order is ineffective, and can be easily thwarted by devious school administrators, unions and their unethical legal counsel, and that these guilty administrators suffer no cost or consequence, since the taxpayers pay every cent of their defense ...." (Ex. W at 2). Plaintiff then repeated his history of litigation before the Teacher Tenure Commission, the Michigan Employment Relations Commission, and the courts. (Ex. W at 3, 4).

On May 24, 1999, Administrative Law Judge Berga issued her preliminary decision and order denying plaintiff's appeal. (Ex. X, *Bush v. Zeeland Pub. Sch.*, No. 98-40). Judge Berga's opinion reviewed Superintendent Feenstra's reasons for requiring plaintiff to undergo a

psychological examination before plaintiff could return to the classroom as a teacher.

> Before appellant would be allowed to return to work, Mr. Feenstra required appellate to undergo psychological evaluation to assess whether he posed a risk of workplace violence. In response to why he took such action, Mr. Feenstra responded that appellant had talked about workplace violence, and had displayed extreme anger toward Assistant Superintendent Michael Jones and Mr. Jay Klinge, the assistant principal at the high school. Also in some of his legal briefs appellant had written that he had entertained thoughts of killing Mr. Jones with a gun. He had placed his anger towards Mr. Jones at a 10, on a scale of 1 to 10, with a 10 being the most severe. Mr. Feenstra testified that after reading appellants statements in his briefs, about being "tempted to commit some violence to gain revenge", being "trapped in a corner", of "homicide being the leading cause of workplace fatalities", writing about "going postal", about "unjust attorneys not being immune from violence", "teachers, like postal employees are not immune from committing violence" and using the "11th avenue relief" which is "evening the score", all of these individually and collectively, created a concern for the safety of his employees and the possibility that appellant posed a risk of workplace violence. This concern is heightened because the central office, where Mr. Feenstra and Mr. Jones worked, is located inside an elementary school. (Tr. Vol I, pp 114-117; Tr Vol II, pp 77-105).

(Ex. X at 3-4). Judge Berga noted that Dr. Stehouwer, after reviewing excerpts from plaintiff's briefs and lawsuit transcripts, testified that Superintendent Feenstra's request to have plaintiff evaluated for potential threat of workplace violence was reasonable. (Op. 11). Judge Berga held that defendants had authority to require the psychological evaluation and that, under the circumstances, it was quite reasonable to require plaintiff to undergo a psychological evaluation. (Op. 12-13). She noted that, although plaintiff claimed that his references to workplace violence "were intended to get the courts' and administrative tribunals' attention," it was objectively reasonable to consider plaintiff's statements to be threats. (Ex. X at 11). "His briefs, which contained reference to 'street justice,' 'going postal,' 'attorneys and administrators are not immune from workplace violence' or pointing to the incident at Oklahoma City as what might happen when justice is thwarted, [gave] a sound basis for requiring some assurance that [plaintiff] would not resort to violence." (*Id.* at 12). The judge found that plaintiff had abandoned his teaching position and that he "had no intention of returning to work." (*Id.* at 17). Administrative Law Judge Berga rejected plaintiff's claim that the finding of abandonment by the Zeeland Public School Board had been "subterfuge." (*Id.* at 20).

Plaintiff did not file timely written exceptions to Judge Berga's preliminary decision and order. In the absence of timely exceptions by plaintiff, "the Preliminary Decision and Order [became the] Tenure Commission's final decision and order." (Ex. Y, citing MICH. COMP. LAWS § 38.104(5)(j)). On September 29, 1999, the Tenure Commission denied plaintiff's motion for rehearing. (Ex. Z)

On November 23, 1999, the Michigan Court of Appeals dismissed petitioner's appeal for lack of jurisdiction "because the order from the State Tenure Commission [was] not appealable as a matter of right." (Ex. AA, *Bush v. Zeeland Pub. Sch.*, No. 223030 (Mich Ct. App. Nov. 23, 1999)). The Michigan Court of Appeals denied

plaintiff's motion for rehearing. (Ex. BB). On September 26, 2000, the Michigan Supreme Court denied plaintiff's petitions for superintending control and applications for leave to appeal, stating that it was not persuaded that the questions presented should be reviewed. (Ex. CC, *Bush v. Zeeland Pub. Sch. Bd. of Educ.*,463 Mich. 875, 618 N.W.2d 591, 2000 Mich. LEXIS 1555 (Mich. 2000)). On December 27, 2000, the Michigan Supreme Court denied plaintiff's motion for reconsideration. (Ex. DD). Plaintiff filed a petition for certiorari to the United States Supreme Court. (Ex. EE). On October 1, 2001, the Supreme Court of the United States denied plaintiff's petition for a writ of certiorari. *See Bush v. Zeeland Pub. Sch. Bd. of Educ.*, 534 U.S. 819, 122 S. Ct. 51, 151 L. Ed. 2d 21 (2001). N6

Plaintiff filed this lawsuit on October 18, 2001.

Discussion

The court will first address defendants' motion for summary judgment, then proceed to decide defendants' motion for Rule 11 sanctions against plaintiff.

I. Defendants' Motion For Summary Judgment

A. Plaintiff's Claims against Defendants for Events Occurring on or before Judge Enslen's February 27, 1997 Decision are Barred by Federal Claim Preclusion.

Defendants' motion argues that most, if not all, of plaintiff's claims are barred by claim preclusion. n7 Plaintiff's response to defendants' motion (docket # 35 at 2) and his affidavit "Concerning Some of the Relevant Facts And History of this Case" (docket # 36, PP 1-27, 29) make it pellucid that plaintiff is attempting to relitigate his prior unsuccessful lawsuits.

"The doctrine of *res judicata*, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the prior action." *Rivers v. Barberton Bd. of Educ.*, 143 F.3d 1029, 1031 (6th Cir. 1998). Federal claim preclusion stemming from a final judgment precludes not only relitigation of issues that

were raised, but also theories of recovery that could have been litigated. *See J.Z.G. Resources, Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996); *Watts v. Federal Express Corp.*, 53 Fed. Appx. 333, 2002 U.S. App. LEXIS 26113, 2002 WL 31828199, at * 2 (6th Cir. 2002); *Taylor v. United States Gov't*,21 Fed. Appx. 264, 2001 U.S. App. LEXIS 18100, 2001 WL 1298959, at * 1 (6th Cir. 2001).

The elements of federal claim preclusion are well established: (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or should have been litigated in the prior action; and (4) an identity of the causes of action. *Rivers*, 143 F.3d at 1031; *see Bittinger v. Tecumseh Prods Co.*, 123 F.3d 877, 880 (6th Cir. 1997).

The prior judgment by Judge Enslen is clearly a judgment on the merits for purposes of claim preclusion. *See Rivers*, 143 F.3d at 1032; *see also Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981); *Spann v. Detroit Bd. of Ed.*, No. 99-1107, 2000 WL 1359626, at * 2 (6th Cir. Sept. 14, 2000). The prior judgment involved the same parties or their privies and all the issues raised in this lawsuit concerning actions by defendants on or before February 27, 1997, were or should have been litigated in the prior lawsuit. Finally, the causes of action are identical, as all of plaintiff's claims stem from his school district employment. *See Sanders Confectionary Prods., Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 484 (6th Cir. 1992) ("Identity of causes of action means an identity of the facts creating the cause of action and evidence necessary to sustain each action."). It is patent that federal claim preclusion bars the vast majority of plaintiff's claims.

The law does not allow plaintiff the luxury of bringing *seriatim* lawsuits based on the very same acts and omissions. Plaintiff could have, and should have, brought any claims he had regarding his employment in the prior lawsuit. The judgment in the previous action bars litigation of actions taken by defendants on or before February 27,

1997. Defendants' motion for summary judgment on this ground will be granted.

B. State Law Claim Preclusion Bars Plaintiff's Claims Concerning His Leave of Absence Status until the End of the 1997-1998 School Year.

The doctrine of claim preclusion provides that if an action results in a judgment on the merits, that judgment operates as an absolute bar to any subsequent action on the same cause between the same parties, with respect both to every matter that was actually litigated in the first case, as well as to every ground of recovery that might have been presented. *See Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 582 (6th Cir. 1994).

> The purposes of claim preclusion are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, prevent inconsistent decisions, encourage reliance on adjudication, and promote comity between the state and federal courts. *Allen v. McCurry*, 449 U.S. 90, 94, 96, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). A federal court must give a state court judgment the same preclusive effect it would have in the courts of the rendering state. 28 U.S.C. § 1738; *Heyliger v. State University and Community College System*, 126 F.3d 849, 851-52 (6th Cir.1997). As such, the preclusive effect of previous state court judgments in this case is governed by Michigan law on preclusion.

Dubuc v. Green Oak Twp., 312 F.3d 736, 744 (6th Cir. 2002); *see Stuhlreyer v. Armco, Inc.*, 12 F.3d 75, 77 (6th Cir. 1993)("State judicial proceedings are entitled to the same preclusive effect in federal court as they would receive in the judgment-rendering state."); 28 U.S.C. § 1738 (Full Faith and Credit Act).

"The preclusive effect of a state court judgment is determined by that state's law." *Peterson Novelties, Inc. v. City of Berkley,* 305 F.3d 386, 394 (6th Cir. 2002). Under Michigan law, "there are three prerequisites to application of the doctrine of *res judicata.* n8 (1) the prior action must have been decided on its merits; (2) the issues raised in the second case must have been resolved in the first; and (3) both actions must have involved the same parties or their privies." *Roberts v. City of Troy,* 170 Mich. App. 567, 429 N.W.2d 206, 211 (Mich. Ct. App. 1988); *see Dubuc,* 312 F.3d at 747. Here, plaintiff's prior action concerning his leave of absence status meets all three prerequisites under Michigan law. First, plaintiff's prior action involved the same parties or their privies. Second, both actions involved the same issues regarding the lawfulness of defendants' classification of plaintiff. Third, the decision of the Michigan Court of Appeals affirming the Tenure Commission's decision was a decision on the merits.

Michigan follows the broad Restatement of Judgments rule, which bars "not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Sewell v. Clean Cut Mgmt., Inc.,* 463 Mich. 569, 621 N.W.2d 222, 225 (Mich. 2001); *see also Gose v. Monroe Auto Equip. Co.,* 409 Mich. 147, 294 N.W.2d 165, 167 (Mich. 1980); *Dubuc,* 312 F.3d at 747-48.

Plaintiff certainly disagrees with the decisions of state tribunals. Plaintiff argues, "The State of Michigan cannot be trusted to enforce the laws and constitution of the State of Michigan, let alone the Federal Constitution. It is my belief that the courts and agencies with whom I have had contact are in the majority incompetent and prejudiced, at the least [sic], and should not be differed [sic] to in way." (docket # 36, P 29). Nonetheless, a state-court judgment, even if gravely erroneous, is entitled to full faith and credit, unless the error deprived the rendering court of jurisdiction under the law of the state. *See Migra v. Warren City Sch. Dist. Bd. of Educ.,* 465 U.S. 75, 84-85, 79 L.

Ed. 2d 56, 104 S. Ct. 892 (1984); *see also In Re Brady, Texas Mun. Gas Corp.*, 936 F.2d 212, 219 (5th Cir. 1991); *United States v. Straits Steel & Wire Co.*, 810 F. Supp. 208, 211 (W.D. Mich. 1992). Until the judgment is set aside in the Michigan courts, "it is valid and binding for all purposes and cannot be collaterally attacked." *Altman v. Nelson*, 197 Mich. App. 467, 495 N.W.2d 826, 829 (Mich. Ct. App. 1992); *Liggins v. Michigan Family Independence Agency*, 2000 U.S. App. LEXIS 33687, No. 00-1734, 2000 WL 1872043, at * 1 (6th Cir. Dec. 14, 2000); *Soltesz v. Ohio Unemployment Compensation Review Comm'n*, 2000 U.S. App. LEXIS 21207, No. 99-4219, 2000 WL 1182620, at * 2 (6th Cir. Aug. 15, 2000). Defendants are entitled to judgment in their favor as a matter of law on plaintiff's claims concerning his leave-of-absence status.

C. Claim Preclusion Bars Plaintiff's Claims Based Upon the Abandonment of His Teaching Position.

"'It is established law in [Michigan] that the doctrines of res judicata and collateral estoppel apply to administrative determinations which are adjudicatory in nature, where a method of appeal is provided, and where it is clear that it was the legislative intention to make the determination final in the absence of an appeal.'" *Cousino v. Board of Edu. of Utica Cmty. Sch.*, 2001 Mich. App. LEXIS 737, No. 216770, 2001 WL 788499, at * 1 (Mich. Ct. App. Jan. 12, 2001) (quoting *Senior Accountants v. Detroit*, 399 Mich. 449, 249 N.W. 2d 121, 124-25 (Mich. 1976)). A Michigan Teacher Tenure Commission hearing is adjudicatory, provides for an appeal, and was intended by the legislature to be final in the absence of an appeal. *Cousino*,2001 Mich. App. LEXIS 737, 2001 WL 788499, at * 1; *Dearborn Heights Sch. Dist. v. Wayne County MEA/DEA*, 233 Mich. App. 120, 592 N.W.2d 408 (Mich. Ct. App. 1988). The Michigan Teacher Tenure Commission found that plaintiff had abandoned his teaching position when he refused to submit to the psychological evaluations necessary to determine the threat plaintiff posed of violence to co-workers and students. *Res judicata* bars plaintiff from

challenging in this lawsuit the state determination that he had abandoned his teaching position. n9 Defendants are entitled to judgment in their favor as a matter of law on plaintiff's claims concerning abandonment of his teaching position. N10

D. Even Absent the Preclusive Effect of Prior Judgments, Plaintiff Fails to Raise Any Genuine Issue of Fact for Trial and Defendants are Entitled to Judgment in their Favor as a Matter of Law on Plaintiff's Claims.

On an alternative basis, the court finds that even without considering claim or issue preclusion, defendants are entitled to summary judgment upon all plaintiff's claims. Plaintiff's First Amended Complaint lists of ten separate counts:

1. Violation of plaintiff's privacy rights under the Ninth Amendment;
2. Violation of plaintiff's free speech rights under the First Amendment;
3. Violation of plaintiff's due process under the Fourteenth Amendment by not providing plaintiff with a pre-termination hearing;
4. Violation of plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment;
5. Violation of plaintiff's Sixth Amendment and due process "right to face and confront his accusers;
6. Violation of plaintiff's "state granted property rights in employment' in violation of the Fourteenth Amendment;
7. Violation of the Supremacy Clause by the Michigan teacher tenure statute;
8. Violation of defendants' "own policy on discrimination in the workplace;"
9. Conspiracy to deprive plaintiff of "multiple rights;" and
10. Deliberate indifference "to multiple and

continued violations of plaintiff's substantial rights."

1. Privacy claim

Plaintiff's first claim arises from his allegation that defendants violated his right to privacy by publishing private facts relating to his mental condition. Plaintiff asserts the existence of federal "privacy rights" under the Ninth Amendment. n11 "The Ninth Amendment is a rule of interpretation rather than a source of rights." *Froehlich v. Wisconsin*, 196 F.3d 800, 801 (7th Cir. 1999). Its purpose is to make clear that the enumeration of specific rights in the Bill of Rights is not intended (by the interpretive principle *expressio unis est exclusio alterius*) to deny the existence of unenumerated rights. 196 F.3d at 801; *Gibson v. Matthews*, 926 F.2d 532, 537 (6th Cir. 1991). The Ninth Amendment does not confer substantive rights in addition to those conferred by other portions of the Constitution. *See Gibson*, 926 F.2d at 537; *Green v Hill*, 1995 U.S. App. LEXIS 38843, No. 94-1851, 1995 WL 764119, at * 2 (6th Cir. Dec. 27, 1995).

Plaintiff makes passing reference to a claim of a violation of a "right to privacy." The court assumes that plaintiff is attempting to assert a privacy claim under the Due Process Clause of the Fourteenth Amendment. *See Vega-Rodriguez v. Puerto Rico Tel. Co.*, 110 F.3d 174, 182 (1st Cir. 1997). The Constitution of the United States "does not encompass a general right to nondisclosure of private information." *Hahn v. Star Bank*, 190 F.3d 708, 714 (6th Cir. 1999). The Fourteenth Amendment's right of privacy is limited to those rights which are fundamental or implicit in the concept of ordered liberty. *See Paul v. Davis*, 424 U.S. 693, 713, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976). The Supreme Court has held that activities within this definition include marriage, procreation, contraception, family relationships, child rearing and education. 424 U.S. at 713; *see also Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996). Plaintiff openly litigated his claim of psychological disability. The threats plaintiff made in various briefs and in his testimony are a matter of public record. Plaintiff has

not established a viable Fourteenth Amendment privacy claim. Defendants are entitled to judgment in their favor as a matter of law on this claim.

2. First Amendment claim

Plaintiff asserts a violation of his right to free speech under the First Amendment. Plaintiff claims retaliation against him for the threatening statements he made in his briefs to "get the attention" of the courts and administrative tribunals. To establish a prima facie case, plaintiff must demonstrate: (1) that he was engaged in a constitutionally protected speech; (2) that the defendants' adverse action caused him to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the adverse action was motivated at least in part as a response to his exercise of constitutionally protected rights. *See Gragg v. Kentucky Cabinet for Workforce Development*, 289 F.3d 958, 965 (6th Cir. 2002); *Sharp v. Lindsey*, 285 F.3d 479, 484 (6th Cir. 2002).

"In *Connick v. Myers*, 461 U.S. 138, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983), the Supreme Court established a two-part inquiry for determining when the discharge of a public employee violates the First Amendment. The threshold question is whether the employee's speech may fairly be characterized as constituting speech on a matter of public concern. If the speech relates to a matter of public concern, then the court employs the balancing test outlined in *Pickering v. Board of Education*, 391 U.S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731 (1968), to determine if the employee's free speech interests outweigh the efficiency interests of the government as an employer." *Rose v. Stephens*, 291 F.3d 917, 920 (6th Cir. 2002); *see Sharp v. Lindsey*, 285 F.3d at 485-86. Because of the need to provide government officials with the ability to manage their offices without intrusive oversight by the judiciary, the court's concern must be to protect those expressive activities of a public employee when he speaks as a citizen on a public matter, a concern that ordinarily does not extend to a public employee speaking on matters only of his personal interest. *See Rose*,

291 F.3d at 923. "A public employee's speech dealing with 'matters only of personal interest' is generally not afforded constitutional protection." *Vaughn v. Lawrenceberg Power Sys.*, 269 F.3d 703, 716 (6th Cir. 2001). "The Supreme Court has elaborated on this definition by characterizing unprotected speech as 'speech that involves nothing more than a complaint about the employee's own duties which may give rise to discipline without imposing any special burden of justification on the government employer.'" *Vaughn*, 269 F.3d at 716 (quoting *United States v. National Treasury Employees Union*, 513 U.S. 454, 466, 130 L. Ed. 2d 964, 115 S. Ct. 1003 (1995)).

Whether speech addresses a matter of public concern is a question of law for the court to decide. *See Bonell v. Lorenzo*, 241 F.3d 800, 810 (6th Cir. 2001); Chappel v. Montgomery County Fire Protection Dist. No. 1, 131 F.3d 564, 574 (6th Cir. 1997); *Williams v. Kentucky*, 24 F.3d 1526, 1532 (6th Cir. 1994). "A public concern is one relating to 'any matter of political, social, or other concern to the community.'" *Gragg*, 289 F.3d at 965 (quoting *Connick*, 461 U.S. at 146). A court determines whether speech addresses a matter of public concern by looking to the "content, form and context of a given statement, as revealed by the whole record." *Connick*, 461 U.S. at 147-48; *Lautermilch v. Findlay City Sch.*, 314 F.3d 271, 276 (6th Cir. 2003).

Plaintiff has not identified any specific statement which he claims to have been protected speech. Therefore, the content, form and context are completely lacking. Indulgently, plaintiff may be claiming that the threats he made in his legal papers of inflicting physical injury upon supervisors, such as threatening to "go postal," constituted protected speech. Plaintiff's threats of violence are not protected speech on a matter of public concern. By his own admission, plaintiff's threats were, at best, attempts to garner the attention of decisionmakers in his cases. More objectively, plaintiff's threats appear to be attempts to intimidate others opposing plaintiff's position. Defendants

are entitled to judgment in their favor as a matter of law on plaintiff's First Amendment claim.

3. Due Process claims

Plaintiff argues that defendants violated his due process rights under the Fourteenth Amendment by not providing plaintiff with a pre-termination hearing. The Fourteenth Amendment prohibits state actors from depriving an individual of life, liberty or property without due process of law. In *Bailey v. Floyd Bd. of Educ.*, 106 F.3d 135, 1997 U.S. App. LEXIS 1516 the Sixth Circuit reviewed the standard for finding a protected interest in government employment.

> The existence of a property interest depends largely on state law. Government employment amounts to a protected property interest when the employee is entitled to continued employment. Neither mere government employment nor an abstract need or desire for continued employment will give rise to a property interest. Rather, a property interest exists and its boundaries are defined by rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

106 F.3d at 141; *see also See Lautermilch v. Findlay City Sch.*, 314 F.3d at 274. Plaintiff has not identified any Michigan law establishing that he had a property interest in employment for the 1998-1999 or any subsequent school years. Even if plaintiff had demonstrated such a property interest, it is undisputed that plaintiff had prior notice and an opportunity to be heard prior to the School Board's consideration of the resolution finding that he had abandoned his teaching position. Defendants' actions did not violate plaintiff's due-process rights. Defendants are entitled to judgment in their favor as a matter of law.

4. Equal Protection Clause claim

Plaintiff invokes the Equal Protection Clause of the Fourteenth Amendment. Plaintiff, a white, male, has not alleged or supported with evidence any viable claim under the Equal Protection Clause. *See Lautermilch v. Findlay City Sch.*, 314 F.3d at 275. Defendants' motion for summary judgment will be granted on this claim.

5. Sixth Amendment claim

Plaintiff claims a violation of his Sixth Amendment "right to face and confront his accusers." n12 Plaintiff's Sixth Amendment claim is frivolous. The Sixth Amendment states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; and which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. amend. vi. The Sixth Amendment is limited to criminal prosecutions. *See Hannah v. Larche*, 363 U.S. 420, 440 n. 16, 4 L. Ed. 2d 1307, 80 S. Ct. 1502 (1960); *United States v. Zucker*, 161 U.S. 475, 481, 40 L. Ed. 777, 16 S. Ct. 641 (1896).

6. Supremacy Clause claim

Plaintiff argues that Michigan's teacher tenure statute is "in violation of the US Constitution Supremacy Clause." Plaintiff does not allege which provision or provisions of Michigan's statute purportedly violate the Supremacy Clause. Plaintiff's disagreement with the Teacher Tenure Commission's decision does not establish a constitutional claim. Plaintiff is aware that his recourse was

to seek leave to appeal to the Michigan Court of Appeals. *Bush v. Zeeland Pub. Sch.*, 1999 Mich. App. LEXIS 2195, No. 213446, 1999 WL 33327154 (Mich Ct. App. Dec. 14, 1999); *Watt v. Ann Arbor Bd. of Educ.*, 234 Mich. App. 701, 600 N.W.2d 95 (Mich. Ct. App. 1999). Michigan's appellate courts denied leave to appeal and the Supreme Court of the United States denied plaintiff's petition for certiorari. This court lacks subject-matter jurisdiction over plaintiff's belated claim attempting to challenge, on Supremacy Clause grounds, after the fact, the decisions of the Michigan Teacher Tenure Commission. Plaintiff has not stated any viable claim against the named defendants under the Supremacy Clause, and defendants are entitled to judgment in their favor as a matter of law.

7. Violation of School Board policy claim

Plaintiff contends, without any factual support, that defendants' actions violated an unspecified school policy against discrimination in the workplace. A mere violation of school policy, even assuming that one had occurred, does not establish a constitutional violation. Plaintiff has not established a viable claim against any defendant.

8. Deliberate indifference to unspecified multiple violations of unspecified substantial rights

Finally, plaintiff claims that defendants were "deliberately indifferent" to "to multiple and continued violations of plaintiff's substantial rights." Plaintiff's vague and conclusory assertions fail to create any genuine issue of material fact for trial. Defendants are entitled to judgment in their favor as a matter of law.

In summary, all plaintiff's claims are barred by claim preclusion, and alternatively, are meritless. Defendants' motion for summary judgment will be granted.

II. Defendants' Motion for Rule 11 Sanctions

Before the court is defendants' motion for imposition of Rule 11 sanctions. (docket # 32). Plaintiff has elected not to file a response to defendants' motion. Upon review, the

court finds that imposition of Rule 11 sanctions against plaintiff is warranted.

Initially, the court finds that defendants have complied with all the procedural prerequisites for imposition of Rule 11 sanctions. Rule 11 of the Federal Rules of Civil Procedure provides that a motion for sanctions "shall not be filed with or presented to the court unless, within 21 days after service of the motion ... the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." FED. R. CIV. P. 11(c)(1)(A). The purpose of this provision is to allow a party or counsel to avoid sanctions by withdrawing the challenged claims or his representation. *See Ridder v. City of Springfield*, 109 F.3d 288, 294 (6th Cir. 1997). Defendants served their motion upon plaintiff by certified mail on July 23, 2002. Plaintiff's safe harbor period within which to dismiss his complaint and avoid sanctions altogether expired on August 13, 2002. Defendants filed their motion for sanctions on August 19, 2002. Defendants provided plaintiff more than ample opportunity to withdraw his complaint and avoid sanctions.

Rule 11(c)(2) provides that, "A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." "The sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." FED. R. CIV. P. 11(C)(2).

Appellate review of a district court's decision on a motion for Rule 11 sanctions is under an abuse of discretion standard. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990); *Tropf v. Fidelity Nat'l Title Ins. Co.*, 289 F.3d 929, 936 (6th Cir. 2002); *see also Tahfs v. Proctor*, 316 F.3d 584, 593 (6th Cir. 2003). *Pro se* litigants must comply with the requirements of Rule 11. *See*

FED. R. CIV. P. 11(b); *Joiner v. Evans*, 27 Fed. Appx. 485, 2001 U.S. App. LEXIS 24321, 2001 WL 1450810, at * 1 (6th Cir. 2001); *White v. Clay*, 23 Fed. Appx. 407, 2001 U.S. App. LEXIS 24222, 2001 WL 1450675, at * 1 (6th Cir. 2001); *Stevens v. Mooney*, 1996 U.S. App. LEXIS 8008, No. 95-1757, 1996 WL 125048, at * 1 (6th Cir. Mar. 20, 1996).

On two previous occasions, this court has imposed Rule 11 sanctions against plaintiff. Chief Judge Enslen found that plaintiff violated Rule 11 in bringing his prior lawsuit against the Zeeland Public Schools, its employees and affiliated individuals. Judge Enslen refrained from imposing monetary sanctions against plaintiff in that case because plaintiff may not have understood the preclusive effect of his unsuccessful state litigation. n13 Before filing this lawsuit on October 18, 2002, plaintiff knew of Judge Enslen's injunction. Plaintiff openly violated Chief Judge Enslen's injunction forbidding plaintiff from filing any action with respect to issues raised in his prior complaint. (2/27/97 Judgment, Ex. A, p. 2). Plaintiff certainly knew of the preclusive effect of his unsuccessful actions before the state courts and Tenure Commission before initiating this lawsuit. Undaunted, plaintiff continued to pursue patently barred claims. n14 Furthermore, as is his now well-established pattern, plaintiff asserted numerous claims which any reasonable factual or legal inquiry would have placed plaintiff on notice that his claims were frivolous.

The court further finds that plaintiff's pursuit of the present lawsuit has been for the purpose of harassment. The claims plaintiff asserted are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Plaintiff's allegations are devoid of evidentiary support. The court finds that all the defendants' costs and attorney's fees incurred in defending this case stem directly from plaintiff's Rule 11 violations in his complaint and first amended complaint. Defendants are entitled to recover reasonable attorney's fees and costs incurred in defending this lawsuit. The court has

considered lesser sanctions, but finds that no lesser sanction will deter this plaintiff. Defendants will have fourteen days from the date of this memorandum opinion and accompanying judgment within which to submit affidavits and other documentation establishing their reasonable attorney's fees and costs incurred in defending this lawsuit. Plaintiff will have fourteen days thereafter within which to submit and support any objection to the reasonableness of the attorney's fees and costs sought by defendants, after which the court will consider the matter ready for decision.

Monetary sanctions alone will not deter plaintiff from violating Rule 11. The court finds that nonmonetary sanctions pursuant to Rule 11(c)(2) are necessary to prevent a repetition of plaintiff's offending conduct. Nothing yet has stopped this plaintiff from attempting to relitigate a decade of unsuccessful claims. Plaintiff has had more than sufficient notice of the possibility of injunctive relief against him. Defendants requested such relief in their August 2002 motion. Plaintiff has enjoyed more than ample opportunity to be heard on the issue. Furthermore, it is well established that federal courts have inherent powers to impose appropriate nonmonetary sanctions to deter future frivolous lawsuits and/or relitigation of the same lawsuit and frivolous and vexatious litigation. *See Cauthon v. Rogers*, 116 F.3d 1334, 1337 (10th Cir. 1997); *United States v. Circuit Court for Taylor County*, 73 F.3d 669, 670 (7th Cir. 1995); *Wrenn v. Vanderbilt Univ. Hosp., Nos.* 1995 U.S. App. LEXIS 5470, 94-5453, 94-5593, 1995 WL 111480, at * 3 (6th Cir. Mar. 15, 1995); *accord Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998); *Telechron, Inc. v. Intergraph Corp.*, 1996 U.S. App. LEXIS 19098, No. 95-1039, 1996 WL 370136, at * 2 (6th Cir. July 2, 1996) ("Although imposing sanctions pursuant to inherent power and Rule 11 are analogous, courts are not bound by the strictures of Rule 11 case law when exercising their inherent powers.").

Every paper filed with the Clerk of this court, no matter how repetitious or frivolous, requires some portion

of the institution's limited resources. A part of the court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. *See In re McDonald*, 489 U.S. 180, 184, 103 L. Ed. 2d 158, 109 S. Ct. 993 (1989). Federal district courts necessarily have considerable discretion in drafting orders restricting a litigious party's access to courts. *See Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1294 (11th Cir. 2002) (given the plaintiff's "near obsession regarding his former employer, injunctive means [was] the only means that offered any chance of preventing further harassment"); *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993); *United States v. MK-Ferguson Co.*, 99 F.3d 1538, 1548 (10th Cir. 1996); *United States v. Hughes Aircraft Co.*, 98 F.3d 1100, 1996 U.S. App. LEXIS 27322 (9th Cir. 1996); *United States v. Barker*, 182 F.R.D. 661, 664 (S..D. Ga. 1998). Both the Supreme Court and the Sixth Circuit have reaffirmed the district court's inherent authority to take action to prevent abuse of the judicial system. *See Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-45, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991); *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997); *accord First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512 (6th Cir. 2002); *Ulysses I & Co. v. Feldstein*, 2002 U.S. Dist. LEXIS 14541, No. 01 cv 3102 LAP, 2002 WL 1813851, at * 13 (S.D.N.Y. Aug. 8, 2002) ("The Federal courts have an institutional concern and obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions."). A prerequisite to the exercise of such power is a finding that a litigant has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Big Yank*, 125 F.3d at 313. The concept of bad faith is an objective one. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). A claim is brought in bad faith if it is frivolous. *Id.; see Nabkey v. Gibson*, 923 F. Supp. 117, 122 (W.D. Mich. 1990). Objectively, plaintiff's present lawsuit was filed vexatiously and in bad faith.

The court's order under Rule 11 or its inherent powers cannot completely foreclose a litigant from access

to the court. *See Ortman v. Thomas,* 99 F.3d 807, 811 (6th Cir. 1996); *Washington v. Alaimo,* 934 F. Supp. 1395, 1400 (S.D. Ga. 1996). However, the right of access to courts is neither absolute or unconditional, and there is no right of access to the courts to prosecute an action that is frivolous and malicious. *See Tripati v. Beaman,* 878 F.2d 351, 353 (10th Cir. 1989); *Roscoe v. Hansen,* 1997 U.S. App. LEXIS 4996, No. 96-2250, 1997 WL 116992, at * 2 (10th Cir. Mar. 17, 1997). Requiring court review of any proposed future filings by plaintiff would likely result in waste of scarce judicial resources. *See Sassower v. American Bar Ass'n,* 33 F.3d 733, 736 (7th Cir. 1994). The court finds that requiring plaintiff to pay all costs and attorney's fees imposed in this case and to post a bond before allowing plaintiff to file another civil lawsuit against defendants or affiliated individuals is an appropriate remedy. *See United States v. Circuit Court for Taylor County,* 73 F.3d at 674; *Johnson v. Tuff n Rumble Mgmt., Inc.,* 2000 U.S. Dist. LEXIS 7055, No. 99-1374, 2000 WL 622612, at * 10 (E.D. La. May 15, 2000); *Jean v. Dugan,* 29 F. Supp. 2d 939 (N.D. Ind. 1998) (requiring payment of all sanctions and imposing $5,000 bond before allowing plaintiff to bring any future lawsuits).

The court is authorized to issue an injunction requiring plaintiff to post a bond in any future lawsuit to cover potential costs, attorney's fees, and other sanctions. *Stewart v. Fleet Fin.,*2000 U.S. App. LEXIS 21201, No. 99-2282, 2000 WL 1176881, at * 2 (6th Cir. Aug. 10, 2000) (affirming this court's order requiring plaintiff to file a $ 25,000 bond along with any future action against any defendants in the case); *Feathers v. Chevron U.S.A., Inc.,* 141 F.3d 264, 269 (6th Cir. 1998); *Sassower v. American Bar Ass'n,* 33 F.3d at 736; *Anderson v. Steers, Sullivan, McNamara & Rogers,* 998 F.2d 495, 496 (7th Cir. 1993); *Ehm v. Amtrak Bd. Of Directors,* 780 F.2d 516, 517 (5th Cir. 1986); *Hawes v. Club Ecuestre El Comandante,* 535 F.2d 140, 143 (1st Cir. 1976); *May v. Hatter,* No. 00-4115-CIV-MOORE, 2001 WL 579782 (S.D. Fla. May 15, 2001); *Dugan,* 29 F. Supp. 2d at 941; *United States v. Barker,* 182 F.R.D. at 664; *Sallie Mae v. Hanes,*

181 F.R.D. 629, 638 (S.D. Cal. 1998). If the bond is not posted, the lawsuit is dismissed. If posted, the bond is held by the clerk of the court. If the litigant conducts the litigation in accordance with law, the bond is returned at the conclusion of that case. 181 F.R.D. at 638.

The court concludes that the least severe sanction likely to deter this plaintiff from filing future frivolous lawsuits is ordering plaintiff to pay the defendants' reasonable attorney's fees and costs incurred in defending this lawsuit, and ordering nonmonetary sanctions in the form of a permanent injunction against plaintiff, requiring him to pay the sanctions imposed in this lawsuit prior to initiating another lawsuit against the Zeeland Public School Board, the Zeeland Public Schools, or its agents or employees, and prohibiting plaintiff from filing any civil action against the Zeeland Public School Board, the Zeeland Public Schools, or its agents or employees unless plaintiff first files with the Clerk of the Court a bond in the amount of $ 15,000 to cover costs, fees, and sanctions that may be levied against plaintiff in the litigation. The injunctive relief has no punitive aspect, and serves a purely deterrent function. Further, it does not close the courthouse to plaintiff and should not deter the maintenance of meritorious litigation, as the bond secures plaintiff's future liability for costs, attorney's fees, and sanctions in the future litigation, which presupposes that the litigation will be unsuccessful or that plaintiff will engage in sanctionable behavior. If plaintiff does not bring a meritless or sanctionable claim, he has nothing to fear. By the same token, defendants and the court are given real and substantial protection against the maintenance of meritless litigation in the future, as they are assured of a solvent fund for the satisfaction of costs, attorney's fees and sanctions.

Furthermore, the injunction will require plaintiff to attach a copy of this memorandum opinion and accompanying judgment to any future complaints he files in this court or in state court. *Feldstein*, 2002 U.S. Dist. LEXIS 14541, 2002 WL 1813851, at * 14-16 (extending the

attachment requirement to state courts as well as federal courts for the purpose of providing notice, in the spirit of cooperative federalism, to prevent religitation of barred claims). Plaintiff's failure to comply with the terms of the court's injunction shall be sufficient grounds to dismiss a future complaint in this court with prejudice and or grounds for contempt proceedings. *Martin v. United States*, No. Civ. A. 02-186 RWR, ___ F. Supp. 2d ___, 2003 WL 470325 (D.D.C. Feb. 14, 2003); *Barker*, 182 F.R.D. at 665.

Conclusion

Defendants' motion for summary judgment (docket # 21) will be granted and judgment will be entered in their favor. Defendants' motion for sanctions (docket # 32) will also be granted.

Date: March 6, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

Footnotes

n1 The caption of the First Amended Complaint lists "All other board members, whose names are unknown or unremembered at this time." Plaintiff never sought or obtained leave to amend his complaint to make those unidentified Board members defendants in this lawsuit.

n2 This case was originally assigned to Senior Judge Douglas W. Hillman. Upon Judge Hillman's retirement, the case was initially reassigned to United States District Judge Gordon J. Quist. (docket # 41). Judge Quist recused himself from hearing this case, and the case was reassigned to Chief Judge Robert Holmes Bell. (docket #'s 45, 46).

n3 Unless otherwise indicated, the exhibits referenced herein are the exhibits presented in support of defendants' motion for summary judgment.

n4 Magistrate Anderson's summary of plaintiff's

testimony reflects plaintiff's considerable level of hostility and anger. "Plaintiff testified that he was irate with his teacher's union ... Plaintiff testified that he was mad at the City of Zeeland and its officials for citing him for violations of certain city codes." (Ex. B at 3).

n5 Although plaintiff was represented by counsel at trial, plaintiff sought to "supersede his attorney" by personally objecting to cross-examination questions on the basis of privilege. Magistrate Anderson advised plaintiff that by filing a lawsuit asserting psychiatric disability and by testifying in support of such a claim, plaintiff had waived any claim of privilege. (Ex. I at 202-03).

n6 On January 7, 2002, the Supreme Court denied plaintiff's motion for rehearing. *See Bush v. Zeeland Pub. Sch. Bd. of Educ.*, 534 U.S. 1101, 122 S. Ct. 860, 151 L. Ed. 2d 734 (2002).

n7 "Issue preclusion is generally referred to as collateral estoppel, whereas claim preclusion is encompassed by res judicata." *Dubuc v. Green Oak Twp.*, 312 F.3d 736, 745 (6th Cir. 2003).

n8 Some cases refer to a fourth element, the requirement of a final decision. 305 F.3d at 394. In this case, there is no question that the State decisions were final.

n9 Although it is not necessary to lengthen this opinion by applying an issue preclusion analysis, it should be noted that the Tenure Commission's findings on abandonment and all subsidiary issues actually and necessarily litigated, such as plaintiff's threats of physical violence, are binding upon this court. *See Dearborn Heights Sch. Dist.*, 592 N.W.2d at 411.

n10 Decisions of the Bureau of Worker's Compensation are also entitled to *res judicata* effect and bar relitigation of plaintiff's claim of psychiatric disability. *See Gose v. Monroe*, 409 Mich. 147, 294 N.W.2d 165, 168 (Mich. 1980).

n11 The Ninth Amendment states, "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." U.S.

CONST. amend. IX.

n12 To the extent that plaintiff claims a violation of a right under the Fourteenth Amendment's Due Process Clause to "face and confront his accusers," his claim is duplicative of the pre-termination hearing due-process claim, and should be rejected for the reasons previously set forth.

n13 Chief Judge Enslen may not have been aware of the sanctions of costs and attorney's fees imposed against plaintiff by United States District Judge David W. McKeague in *Bush v. Zeeland Bd. of Public Works, et al.*,1997 U.S. Dist. LEXIS 9232, No. 1:96-cv-622 (W.D. Mich. June 2, 1997). Plaintiff pursued an unsuccessful appeal of Judge McKeague's decision. *Bush v. Zeeland Bd., et al.*, No. 97-1793 (6th Cir. 1998).

n14 Plaintiff is becoming an increasingly frequent litigant in this court on criminal, habeas corpus, and other civil claims. Plaintiff was not, and is not, a licensed attorney.

On January 23, 1997, he filed a lawsuit naming the State of Michigan and others as defendants. This court dismissed plaintiff's complaint on October 17, 1997. *Bush v. Donkersloot, et al.*, 1997 U.S. Dist. LEXIS 19441, No. 1:97-cv-51 (W.D. Mich. 1997). The United States Court of Appeals dismissed plaintiff's appeal on May 21, 1998. *Bush v. Donkersloot, et al.*, No. 97-2341 (6th Cir. 1998).

On June 30, 1997, plaintiff filed a lawsuit in this court naming the City of Zeeland and others as defendants. The court granted summary judgment in favor of defendants on February 22, 1999. *Bush v. Klunder, et al.*, 1:97-cv-541 (W.D. Mich. 1999). The Court of Appeals dismissed plaintiff's appeal on October 12, 1999. *Bush v. Klunder, et al.*, No. 99-1362 (6th Cir. 1999).

On March 27, 2000, plaintiff filed a petition for habeas corpus in this court. On May 4, 2000, the court dismissed the petition with prejudice as legally frivolous. *Bush v. Ottawa County Jail*, No. 1:00 cv 206 (W.D. Mich. 2000). On July 11, 2000, the United States Court of Appeals

for the Sixth Circuit denied plaintiff's application for a certificate of appealability. *Bush v. Ottawa County Jail,* No. 00-1647 (6th Cir. July 11, 2000).

On July 30, 2001, plaintiff attempted to remove a state court criminal proceeding to this court. On August 7, 2001, this court summarily remanded the matter to the 58th District Court for Ottawa County. *People v. Bush,* No. 1:01:CR:177 (W.D. Mich. 2001).

On April 19, 2002, plaintiff purported to file a habeas corpus petition on behalf of Kent County jail inmate Mike Kennedy. On May 2, 2002, the court issued an order dismissing the petition. The habeas petition was not signed by inmate Kennedy. Plaintiff was the only signatory. *Kennedy v. Kent County Jail,* No. 1:02 cv 268 (W.D. Mich. 2002). Plaintiff appealed this decision. On July 7, 2002, the United States Court of Appeals issued its decision dismissing the appeal. *Kennedy v. Kent County Jail,* No. 02-1711 (6th Cir. July 7, 2002). On September 19, 2002, the Court of Appeals denied plaintiff's request for rehearing *en banc.*

On August 8, 2002, plaintiff filed a lawsuit in this court against the City of Zeeland and others. On December 12, 2002, this court issued an order dismissing plaintiff's complaint. The court's order remanded as improvidently removed, the Ottawa County Circuit Court case of *City of Zeeland v. Gerald Bush,* No. 02-43822-CZ. *Bush v. City of Zeeland,* No. 1:02-cv-565 (W.D. Mich. 2002). Plaintiff has filed a notice of appeal of this decision to the United States Court of Appeals for the Sixth Circuit. *Bush v. Zeeland, et al.,* No. 03-1080 (6th Cir. 2003).

Appendix E

UNITED STATES
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH,
Plaintiff,
v.
ZEELAND BOARD OF EDUCATION, et al,
Defendants.

Case No. 1:01-cv-672
Honorable Robert Holmes Bell

JUDGMENT AND PERMANENT INJUNCTION

In accordance with the opinion filed this date:

IT IS ORDERED AND ADJUDGED that defendants' motion for summary judgment (docket # 21) is hereby GRANTED and that judgment is entered in favor of defendants on all of plaintiff's claims.

IT IS FURTHER ORDERED that defendants' motion for imposition of Rule 11 sanctions (docket # 32) is hereby GRANTED. The court awards monetary sanctions in favor of defendants, in the amount of their reasonable attorney's fees in defending this action. Defendants are hereby ordered to file within fourteen days of this judgment affidavits and other documentation establishing reasonable attorney's fees incurred in defending this lawsuit. Plaintiff will have fourteen days thereafter within which to submit and support any objection to the reasonableness of the amounts sought by defendants, after which time the court will consider the matter ready for decision.

IT IS FURTHER ORDERED that pursuant to Rule 11 and the court's inherent authority, plaintiff is hereby PERMANENTLY ENJOINED from filing civil lawsuits in this court or any other court against the Zeeland Public School Board, the Zeeland Public Schools, or its employees or agents, unless (1) plaintiff has paid all attorney fees and

costs taxed against him in this action *and* (2) plaintiff first posts a bond, with approved corporate surety, with the Clerk of the court in the penal amount of $15,000 to secure plaintiff's liability for any costs, sanctions, or attorney fees awarded against him in that action. Plaintiff shall attach a copy of this judgment and accompanying opinion to any future complaint filed in any court, asserting any claim against the Zeeland Public School Board, the Zeeland Public Schools, or its employees or agents. Plaintiff's failure to comply with the terms of the court's injunction shall be grounds to dismiss any complaint filed in this court with prejudice and may subject plaintiff to contempt proceedings.

Date: March 6, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

Appendix F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff

-vs-

Case No. 1:01 cv 672
Hon. Robert Holmes Bell

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

MEMORANDUM OPINION

This was an action brought *pro se* by a former employee of the Zeeland Public Schools. Plaintiff last worked for the Zeeland Public School District in 1993. During the decade which followed, plaintiff initiated numerous unsuccessful lawsuits against the school district and affiliated individuals. Plaintiff filed his complaint in this case on October 18, 2001.

On March 6, 2003, the Court entered judgment in favor of defendants, granted a motion for imposition of Rule 11 sanctions against plaintiff, and issued a permanent injunction requiring plaintiff to satisfy certain preconditions before filing any new lawsuits against Zeeland Public School Board, the Zeeland Public Schools, its agents or employees. (docket #49) The reasons for the Court's decisions are set forth at length in a thirty-seven page opinion. (docket #48). Rule 11 sanctions imposed by the Court in two prior lawsuits asserting barred and frivolous claims, in bad faith, for purposes of harassment, and in clear violation of Rule 11. (Op. at 30-37, docket #48). The Court granted defendants fourteen days from the date of

judgment within which to submit affidavits and other documentation establishing reasonable attorney's fees and costs incurred in defending this lawsuit. Defendants timely submitted documentation supporting their request for an award of attorney's fees in the amount of $16,110.00. (docket #54). Plaintiff filed his response (docket #'s 57, 58), defendants filed a reply brief (docket #60), and the matter is now ready for decision.

Discussion

The Court's rationale for awarding defendants their reasonable attorney's fees incurred in defending this lawsuit pursuant to Rule 11 is found within the Court's March 6, 2003 opinion. (docket # 48, Op. at 30-37). That analysis need not be repeated in this opinion, but is incorporated herein by reference.

Defendants' application for attorney's fees is supported by the affidavit of Jon G. March, billing invoices for services rendered, and documentation regarding the training and experience of the attorneys representing defendants in this lawsuit. Attorney March is a member of the Miller, Johnson, Snell and Cummiskey, P.L.C., law firm. March's law firm represented defendants Zeeland Public Schools Board of Education, Gary Feenstra, Tom Bock, and Donald Lake in this lawsuit. (March Aff. #1,4). March's affidavit establishes that defendants have excluded from the amount sought, "time spent in seeking Rule 11 sanctions" (1) and "reimbursement of expenses or legal assistant time." (*Id.* #3,7,8,10,12). Defendants further reduced the amount sought by "34 hours to take into account duplication and inefficiencies resulting from being required to review the substantial history of prior legal proceedings between the parties" and time incurred researching issues not raised in defendants' motion for summary judgment. (*Id.* #6,14). Defendants seek to recover an hourly rate of $200 for attorney March and $160 for attorney Dwight K. Hamilton. Attorney Hamilton has been a member of the Michigan Bar

since 1996 and the $160 per hour rate is his standard hourly rate. Attorney March has been a member of the Michigan Bar since 1972 and his standard hourly rate is $295 per hour. The $200 per hour rate defendants seek to recover sought is a special reduced rate provided to Zeeland Public Schools as a public school client.(*Id.* #15). The Court has scrutinized counsels' time records to assure that they reflect time reasonably expended in defending this action. See *Bodenhamer Building Corp. Architectual Research Corp.*, 989 F.2d 213, 221 (6th Cir. 1993). The Court has also compared counsels' claimed hourly rates to those rates prevailing in this community for like services, on the basis of the Court's frequent involvement in fee litigation. The Court finds that the hourly rates and the number of hours expended are both reasonable.

Plaintiff's response to defendants' documentation is a diatribe against defendants, their attorneys and the courts. (See Objections to Attorney Fee Sanctions by Plaintiff, #1-5,9-11, docket #57). Plaintiff's only viable argument is his claim of financial inability to pay defendants' attorney fees. (*Id.*, #12). Paragraph 27 of plaintiff's affidavit states as follows:

> Mrs. Bush use [sic] to be a stay at home mom, when Mr. Bush was teaching. Now she is virtually the sole support of the Bush family and made less than $13,000 gross in 2002. Obviously that is poverty level income for a family of 3. The Bushs [sic] rental properties are unrented and underrented because of the terrible demands on Mr. Bush [sic] time having to deal with litigation that is totally unjust. Mr. Bush has been deterred from dealing with almost every area of life due to wasted attempts at seeking justice. (See Ex 2 Bush v Zeeland Public Schools, 2-2-99, Transcript, p 1-56[.] Mr. Bush attempts to keep some of their 15 year old vehicles running for transportation purposes. [sic] And to keep up with harassment litigation from the

> vile City of Zeeland and the equally vile Zeeland Public Schools.

(docket #58, P27). A party's ability to pay attorney's fees is an appropriate factor to consider under Rule 11. It is part of the Court's determination that the sanction imposed is limited to what is sufficient to deter repetition of such conduct. See Fed. R. Civ. P. 11(c)(2); see also, *Baker v Alderman*, 158 F.3d 516, 528 (6th Cir. 1998) ("deterrence remains the touchstone of the Rule 11 inquiry"). Here Judge Enslen's prior order imposing Rule 11 sanctions and a permanent injunction and Judge McKeague's order imposing monetary sanctions pursuant to Rule 11 failed to deter plaintiff from initiating the present lawsuit and continuing it. Plaintiff is no stranger to this Court or Rule 11 sanctions. Plaintiff could have avoided Rule 11 sanctions altogether by withdrawing this lawsuit under safe harbor provisions of Rule 11. Having elected to initiate and continue this lawsuit, plaintiff certainly cannot be heard to complain about the demands the lawsuit imposes on his time. Plaintiff should recognize that his lawsuit imposed similar, if not greater burdens upon the defendants.

Plaintiff elected to exclude from his affidavit any accounting of the income provided by his rental properties. Plaintiff did not identify these rental properties or their values. Plaintiff has not submitted any evidence concerning his bank accounts or other information establishing that he is indigent. The $16,110, in attorney's fees sought by defendants is more than adequately justified. Nonetheless, the Court, in its discretion, will reduce the award of attorney's fees by fifty-percent, to a total of $8,055. By making this reduction, the Court, despite plaintiff's lack of evidence, has given plaintiff more than the benefit of a doubt concerning his claim of inability to pay all the defendant's attorney's fees. The Court finds that the $8,055 in attorney's fees, combined with the Court's permanent injunction, is the least severe sanction likely to deter

repetition of plaintiff's offending conduct. Fed. R. Civ. P. 11(c)(2).

Date: April 18, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

---

1 The Court's decision imposing Rule 11 sanctions was intended to include defendants' reasonable attorney's fees incurred in connection with the Rule 11 motion. See Fed. R. Civ. P. 11(c)(1)(A). The Court's judgment should have been more explicit. However, no amendment of the judgment is necessary. For reasons set forth herein, the Court has found it necessary to reduce the award below the conservative amount of $16,110.00 in attorney's fees sought by defendants.

Appendix G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff

-vs- Case No. 1:01 cv 672
Hon. Robert Holmes Bell

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

JUDGMENT FOR COSTS AND ATTORNEY'S FEES

For the reasons set forth in the accompanying memorandum opinion and the Court's March 6, 2003, opinion.

IT IS ORDERED THAT judgment be and hereby is entered against plaintiff in favor of defendants in the amount of $8,055.00 pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Date: April 18, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

(stamped) TRUE COPY
signed original filed electronically
Ronald C. Weston, Sr., Clerk

Appendix H

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD D. BUSH
Plaintiff

-vs-

Case No. 1:01 cv 672
Hon. Robert Holmes Bell

ZEELAND BOARD OF EDUCATION,
et al.,
Defendants

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

On March 6, 2003, this Court entered judgment in favor of defendants, granted a motion for imposition of Rule 11 sanctions against plaintiff, and issued a permanent injunction requiring plaintiff to satisfy certain preconditions before filing any new lawsuits against Zeeland Public School Board, the Zeeland Public Schools, its agents or employees. (docket #49) The reasons for the Court's decisions are set forth at length in a thirty-seven page opinion. (docket #48). On Monday, March 17, 2003, plaintiff filed a motion to alter or amend the judgment pursuant to Rule 59(e). See Fed. R. Civ. P. 6(a), 59(e).

Upon review, the Court finds that plaintiff's arguments are insubstantial and do not provide any basis for relief from the Court's judgment.

IT IS ORDERED that plaintiff's motion for reconsideration (docket #50) be and hereby is DENIED.

Date: April 18, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE

(stamped) TRUE COPY
signed original filed electronically
Ronald C. Weston, Sr., Clerk

Appendix I

UNITED STATES COURT OF APPEALS
FOR THE 6TH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

Bryant Crutcher
(513) 564-7013
www.ca6.uscourts.gov

Filed: May 22, 2003
Gerald D. Bush
724 E. Central
Zeeland, MI 49464

Re: Case No. 03-1616
Bush v Zeeland Board
District Court No. 01-00672

Your appeal has been docketed today as case number 03-1616. The case number and official caption, as it appears on the enclosure, must be on all documents submitted for filing in this case.

The Court's review of the case will be based upon the record of district court proceedings and the briefs filed by the parties. Your brief should explain to the Court the facts of the case, the issues of law which you feel entitle you to relief, and should state the relief which you are seeking. Enclosed you will find a form to be used to present your case in your own words, as clearly as you can. The Court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case.

Appellant's Brief:

Signed original & 6 copies
(See attached Pro Se Brief Form)
Maximum length: 30 Pages
Due 6/19/03

Appellee's Brief:

Signed original & 6 copies
Red cover
Maximum length: See Rule 32 for page or type - volume limitations
Due 7/17/03

Appellant's Reply Brief: (optional)

Signed original & 6 copies
Gray Cover
Due 7/31/03

Joint Appendix or:
Photocopies of Record

5 Copies of Joint Appendix
or 4 copies of Record
White Cover
Due 8/7/03

Appellant's failure to file a brief or joint appendix by the established due dates may result in the dismissal of the case.

Appellee's failure to file a brief by the established due date may result in a decision being made without presentation of the appellee's position. Rule 31(c), Fed. R. App. P.

If you have questions about these instructions, you should contact the case manager at the number listed above. We encourage you to do so if you are uncertain of what is required.

Bryant Crutcher
Case Manager

Enclosures:
Pro Se Appellant's Brief, Form 6CA-70
cc: Mr. Jon G. March

[Pet. Note: copies of enclosures omitted here]

Appendix J

UNITED STATES COURT OF APPEALS
FOR THE 6TH CIRCUIT

ORDER

[Pet. Note: Original does not have case number or date on order, except stamped filed date]

GERALD D. BUSH
Plaintiff-Appellant

-vs-

ZEELAND BOARD OF EDUCATION; DON LAKE; TOM BOCK; GARY FEENSTRA; UNKNOWN PARTY, all other board members whose names are unknown or unremembered at this time.
et al.,
Defendants-Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The Appellant's Brief was not filed by 06/16/03.

It is therefore ORDERED that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk
/s/ Leonard Green, ibc

FILED
Jul 08 2003
LEONARD GREEN, Clerk

Appendix K

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 6, 2003

Mr. Gerald D. Bush
724 E. Central
Zeeland, MI 49464

Re: Gerald D. Bush v
Zeeland Board of Education, et al.
Application No. 03A290

Dear Mr. Bush:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on October 6, 2003 extended the time to and including December 5, 2003.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk
by /s/ JS
Jennifer Sutton
Case Analyst